#### Summary of POC's Key Qualifications:

- POC is the most experienced company in providing full service solutions to presidential primary campaigns.
- POC has a 99.4% track record with matching funds in '92.
- POC will GUARANTEE an overall rate of 99% error-free in '96.
- POC was trusted by bank in '92 regarding matching funds as collateral for "bridge" loan between matching funds payments.
- POC's proprietary software used in 5 presidential primaries. This software took over 15 years to develop.
- POC has excellent security habits and procedures regarding data; our computer access configuration eliminates worry about introduction of a "virus.
- POC has an excellent record of maintaining customer trust by our quality work and quick responsiveness.
- POC has no axe to grind -- we are professional data managers; we answer to the campaign management and respond to the campaign workers with courtesy, leadership, and an underlying appreciation for their problems and tasks.
- POC is ready to focus and give priority to '96 campaign by instituting the Information and Support Center.
- POC is uniquely poised to provide "total state-of-readiness" for the '96 Reelection campaign.

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## POC's Service "With Leadership" Attitude is Very Important:

Our attitude toward service can best be described by what we call "service leadership." That is, when our customers ask us a question, we answer their question and then some.

We try to make sure we understand what they are trying to accomplish (selection) and make sure that the information we provide is exactly what will be the most helpful.

We also make sure the format (presentation on the paper) and the order (sort) of the information is the best possible to solve their problem.

## Responsive Service to campaign workers across the U.S.:

If you asked for it, you must need it.

In the last campaign, we had special pride in our ability to "turnaround" a request on the same day, frequently within minutes of being asked if the information was being printed on a printer in Little Rock.

We have rushed many times to the express shipping offices with packages to be over-nighted throughout the U.S., the request for which had been received just an hour or so earlier.

With our experience supporting campaign workers all across the country in '92 we plan on being even better prepared this time around to deliver the information product on paper, on diskette, on mag tape, via telephone lines, or verbally.

#### "Pouring on the Coal" Services:

As was so crucial during early '92, if there is a need to get the receipts from a Saturday night fundraiser included in a matching funds submission due the following Monday, we worked round-the-clock all weekend to make that possible beginning with picking up the deposit and check copies at the airport as they were shipped in to us.

One of the reasons the Tsongas campaign sputtered after their New Hampshire win was their inability to rapidly process the deludge of checks that followed — and his campaign was the first to get "organized" in '91.

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3. There are many things to consider.

16027 16 - I . 13



# POC's Proprietary Software Is Also Very Experienced:

Throughout this proposal the "experience of POC" has been emphasized and for good reason, experience counts heavily toward evaluating our future performance.

Generally speaking, "experience" is referring to the pertinent experiences of the principals and senior staff of an organization and not their software tools.

But in POC's case, the "experience" of our proprietary software tool, DataFocus, is every bit as important as the experience of the people at POC.

- It has taken POC 15 years to develop DataFocus to the current level of power, flexibility, reliability, and campaign-application specificity capable of supporting the demanding data management requirements of a presidential primary campaign.
- We DO NOT HAVE A PROGRAMMER on staff and never have. Our software is designed so the database is parameter driven and the products are completely in the control of the user by a set of easy to master "conventions."
- Our emphasis is on the DATA. Without reliable, accurate data, the output is obviously of questionable usefulness. We have numerous ways to help ourselves and our users "find" bad and "suspect" data so it can be corrected.
- HUMANS WILL MAKE MISTAKES regardless of the "edits" and various controls established and our tools can help us find them.
- We credit our success in matching funds accuracy to our software tool DataFocus -- no question. It is true we know how to use the tool perfectly but we certainly wouldn't want to tackle the job of data management of a presidential primary campaign without our powerful software tools.
- Package software tools just don't have the power, the flexibility, the reliability, and the application specificity built-in to handle the data management tasks required by a presidential primary.
- Reliance on programmers is obviously asking for trouble AND a big bill. Too many "things" are always surfacing that "no one knew about" to make reliance on programmers and programming the dynamic answer to day-to-day data management.

In evaluating experience, the maturity and experience of the software tool that will be used is every bit as important as the people.

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- 9 -

## The Torture of Poor Quality Information:

The TORTURE OF BAD INFORMATION is often more familiar than the benefits of quality information management:

- time delays sifting through data and cleaning it up,
- inability to quickly get figures needed for critical decision making,
- false "starts" on a project due to problems with data,
- embarrasing inaccuracies in thank-you letters or guest lists,
- inability to meet reporting deadlines with accurate data,
- bad reflections on candidate because of inability to keep up with volume, and
- expensive "end of campaign" clean-ups.

## The BENEFITS are the OPPOSITE of the above PLUS:

- ability to use the data, spur of moment, to quickly generate a product that is critical to the success of the candidate,
- ability to gain confidence of bankers when arranging for credit line to "bridge" between matching funds payments,
- ability to effectively support campaign workers so they are able to be free to do their political work,
- cost effectiveness, and
- peace of mind that everything is able to run as smoothly as possible because the data is accurate and available.

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# Understanding Presidential Primary Accounting:

A \$31 million dollar campaign must have an accounting of the money coming in and the money going out just like any other organization.

Presidential primary accounting would be a snap if only an "accounting" of transactions is needed. But campaigns MUST use bookkeeping information to serve many purpose

#### Contribution data is used to:

; ;;

- fulfill simple bookkeeping requirements of money coming in
- serve matching funds processing
- serve contributions management and document tracking
- fulfill FEC compliance requirements
- serve thank-you letter generation
- serve cash flow management
- track fundraising goals by regions/states/counties/etc.
- support all fundraising efforts and goals management
- support events management
- support direct mail management
- support numerous communications to contributors
- fulfill management information requirements

#### Expenditure data is used to:

- fulfill simple bookkeeping of accounts payable
- track "deposit" batches made by the campaign
- serve as basis for bank statement balancing
- support payroll activities and reporting
- pay and track "filing fees and obligations"
- serve cash flow management
- fulfill internal budget process
- support and track procurement of services
- support and track contracts, future obligations, & contacts regarding procurement and fulfillment of campaign obligations
- fulfill FEC compliance requirements
- fulfill FEC state allocations tracking
- fulfill FEC audit requirements
- serve as basis of information for FEC NOCO statements
- provide vendor information and summary data
- fulfill management information requirements



# Database software packages too weak for presidential accounting:

Database management packages are available to fulfill accounting and general contributions management but they are not adequate to handle a presidential primary because:

- Most database packages lack power and flexibility to support the huge data entry task; this is the single most underestimated part of contributions management. Accuracy is crucial, speed is crucial.
- Most packages won't come close to providing the data management "tools" necessary to handle the volume and achieve the accuracy required in matching funds.
- Users of sophisticated, mature packages still rely on programmers or technical experts to accomplish the wide variety of data manipulations and generation of products that is necessary to support large campaigns.

#### Payables packages also inadequate:

Numerous payables packages are available to fulfill the bookkeeping requirements of expenditure management, however:

- Accounting packages "trap" the data inside the internal file structure,
- at best, only the simply bookkeeping requirements are fulfilled by accounting/payables packages because the expenditure data is literally inaccessible for data manipulations required for general reporting,
- expenditure data must be re-entered on a computer with relational data-management capabilities so that FEC reporting and management information needs can be fulfilled.

POC's Republican Counterpart\*\* views accounting the same way:

"It's actually two jobs, the normal bookkeeping you would do for a company plus all the requirements for reporting that are not generated by normal bookkeeping."

#### Conclusion:

Database software packages are inadequate because they lack power & flexibility; general reliance on programming to shore up packages and generate reports is anathema to good data management.

Payables packages are inadequate because they only fulfill the book-keeping requirements; FEC compliance, state allocations, and most management information requirements can only be met if the data is "re-entered" on relational database, as done in Clinton '92.

\*\* Quote from the enclosed 1992 FEC Press Release.

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16-I.17

- 12 -

# POC's recommendation for CONTRIBUTIONS management in '96:

The contributions to the Clinton '92 campaign were the sole responsibility of POC. The superlatives achieved in matching funds and the quality of our other services to the campaign supports our belief that the '96 contribution data should again be managed by POC.

## Considerations for EXPENDITURE management in '96:

POC was heavily involved in the expenditure data management in the '92 campaign; we were responsible for the duplication of the expenditure data for fulfillment of FEC reporting, state allocations, and audit requirements.

We have given a lot of thought to the major problems of '92:

- The bookkeeping side of things struggled throughout the campaign even though the CPA's selected one and then another accounting package; a massive clean-up was required when the campaign was over.
- The inability of the accounting department in Little Rock to provide fundamental support to POC's operation made it necessary for us to do a lot of overlapping work and take on additional responsibilities.
- It stands to reason that if accurate information could not be given to POC, then the campaign's management also went "begging" for information to support decisions regarding budget, cash flow, loan draws, NOCO's, etc.
- The inherent inadequacy of accounting packages to generate reports for FEC purposes, made it necessary to re-enter large quantities of the data on the POC system.

## Paradigm Change Necessary for Expenditure Management:

Why use a separate bookkeeping system at all if most of the data must be duplicated on another computer for reporting purposes?

POC recommends using DataFocus software to fulfill bookkeeping & FEC reporting requirements -- obviating the need to re-enter data.

POC's DataFocus software has unlimited relational data manipulation, check writing, vendor tracking, budget, FEC reporting, and any other management information reporting capabilities WITHOUT requiring programmer intervention.

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## POC's DataFocus software underpins quality management:

- Budget reports, cash on hand reports, cash requirement reports, and other status reports that are necessary for overall good management of the campaign can be prepared and disseminated on a routine basis.
- FEC reporting deadlines can be met ahead of time to allow for time to "consider" the report and go through checklist to make sure that nothing is overlooked.
- Vendors and invoices can be tracked efficiently and accurately.
- The data can be put through routine "trial balances" to make sure all data is reliable.
- Bank statements can be balanced on a timely basis.
- Day-to-day operations can be met without the chaos created by ad hoc requests (satisfied by routine dissemination of information, time-wasting "hunts" for documents and data, and constant "error handling."
- Issues that fall "out of the norm" can be routinely reviewed and handled by proper legal or management intervention to head off problems and limit potential damage of poorly handled issues.

The quality management described above seems rather obvious and mundane. We all know they are hardly ever achieved and Clinton '92 was no exception. POC has the experience and the software tools to accomplish these fundamental, essential data-management goals.

16033



POC is not perfect; we have made mistakes, some of them during the '92 campaign. We are committed to try not repeat them.

We know that the management of President Clinton's reelection campaign feels the same way: committed not to repeat mistakes.

It is with these things in mind that we humbly offer our thoughts on common mistakes made by the management of large campaigns pertaining to the accounting and information structure meant to support management information and workers in large campaigns:

#### Mistake of being independent & doing everything themselves:

In an effort to get the campaign's operations organized, management frequently becomes overburdened by attending to too many details. Other critical, more amorphous tasks, that require or deserve personal and thoughtful attention, go undone or get done poorly.

Professional management of units of operations should be implemented whenever possible; it lightens the load, allows for proper attention to be given to deserving tasks, and provides a clear line of responsibility.

#### Mistake of planning the ideal campaign "operationally":

A presidential campaign has a very short life; there is no time to perfect an ideal plan so far as campaign operations are concerned; Senator Tsongas's campaign started out VERY early in 1991 and experienced "organized chaos" trying to track expenditures and was even unable to "put the money in the bank" when he won in New Hampshire.

Campaigns don't fail to plan, their ideal plans fail due to the pressures and exigencies of the times.

## Mistake of ignoring basics while over-valuing sophistication:

Plans should be made to ensure that BEFORE any level of convenience or sophistication is applied to operations or worker support, basic requirements should be in place.

Frequently, UNNECESSARY AND OFTEN UNUSED levels of convenience and sophistication absorb resources while the basics, like swift production of letters & labels, accurate and plentiful financial data, attention to budget, basic fundraising support, development of a super database of contributors and VIP's, etc., go woefully lacking for attention and resources.

Mistake of ignoring the past.

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POC is ready to quietly commit the resources necessary to help the '96 Committee achieve a state of readiness, the effects of which can't help but infuse a sense of preparedness that will be inspirational throughout '96.

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Designate POC with responsibility for creating the Information and Support Center and it will be done.

- We will consider any contact with the '96 planning group highly confidential; any arrangements or agreements will also be kept highly confidential.
- We will begin immediately to plan to be ready on "opening day."
- POC will give URGENT ATTENTION to the CORE database; we have the historical perspective necessary to pull it together; it is important to make sure the data is clean, duplicates are removed, and the addresses are updated through NCOA as soon as possible.
- Beyond making the commitment to follow through with the Center with POC as the manager, we require nothing but your cooperation in obtaining data files if needed.
- We don't know of any risks or trade-offs that would deter the implementation of the Center as described in this proposal.
- We believe the overall cost will be substantially LESS than incurred for the same services during the last campaign.
- We see no reason why President Clinton's reelection campaign shouldn't have the finest, most experienced information and data-support systems.
- We believe that our guarantee of 99% error-free matching funds rate plus other performance incentives provides the campaign with a unique opportunity to gain advantages of excellent data management from day #1 WITH LIMITED RISKS.
- We believe the '96 will experience only benefits and savings by approaching their accounting and data management as proposed by establishing the Center.
- A great deal of confidence was placed in POC in late 1991; we are ready to perform again.
- Clearly, the principals of POC are ready to work with the '96 campaign.

We invite you to visit our offices at 911 Second Street, N.E., Washington, D.C.; please call us at 202/675-4900 to arrange a confidential meeting. We can also be reached at 703/406-0209.

We appreciate your consideration.

16036



# Public Office Corporation

911 Second Street, N.E. Washington, D.C. 20002 202 675-4900 / Fax 675-4911

#### MEMORANDUM

TO: Marcia Scott and Mark Middleton

FROM: Pat Anderson, Public Office Corporation

DATE: September 16, 1994

RR: Superfile

It was a pleasure to meet you, Marcia, and great to see you, Mark. Bill and I very much appreciate the opportunity to give you our thoughts and possibly participate in this highly important endeavor.

My meeting with Eric Vaden was very productive; perhaps soon I can get a demo of the official system.

There are distinct phases of implementation and many bases to be covered when it comes to the implementation of a Superfile and a supporting campaign system. Just a few of the major issues are outlined below:

(1) COMPILE SUPERFILE - can and should begin right away - not tied in any way to the other phases - must be accomplished FIRST.

This includes the match-up, merger, and duplicate reconciliation of several files, the cornerstone of which is the '92 primary contributors, GELAC, transition fund contributors, and the inauguration files. The resultant Superfile will contain upwards of 1.4 million records.

- (2) DECIDE WHAT DATA IS NECESSARY TO TRACK in other words, the record layout that will be standard for the Superfile. Set up a "style" manual to enforce edits and maintain data consistency.
- (3) DESIGN AND IMPLEMENT A DATA MANAGEMENT PRILOSOPHY and user interface capability so that all classes of users are supported while insuring that the integrity and functionality of the data is maintained. This would involve a rather sophisticated multi-level data protection and general security system from login all the way down to the field level. And it must be practical, usable, and easy to enforce!
- (4) SELECT, PROCURE (AND PROVIDE A SITE) for the CPU, peripheral hardware, operating system software, and user (application) software that will satisfy the needs of all classes of users in a national presidential campaign.
- (5) DESIGN AND IMPLEMENT A MANAGEMENT STRUCTURE to ensure that the physical plant is protected to provide continuity, user training and support, central processing and production documentation, backup and data security, application support, Superfile support, etc. (this is going to be a long list).

- (6) ENSURE THAT THE NEXT CAMPAIGN BENEFITS FROM THE EXPERIENCE OF THE LAST. This applies to all phases of computer support. All task areas should be planned so as to avoid groping around and making costly mistakes after the campaign is launched. Particular focus should be placed on all areas of contribution management and F.E.C. reporting, on matching funds optimization, and on all phases of accounting and budgeting. Computer tools should also materially help in campaign organization, in campaign communications, and in maintaining good relations with contributors and other supporters.
- (7) ENSURE FLEXIBILITY (in management and software) SECURITY -RESPONSIVENESS - and LOYALTY.

An attitude of "it's not my department" or "you didn't tell me" or "it's too late" will not be sufficient for the Superfile. The management attitude must be totally responsible but simple: there are a finite number of days to accomplish a tremendous amount.

The above descriptions are just seven of the many things that need to be considered in the Superfile. They are all fundamental, essential, important and integral to a truly successful, smooth running campaign.

It would be nice to sit back and figure all these things out, detail by detail; assign task groups to focus on each area - write it all down; work up a detailed cost picture - figure out a budget - time lines, etc. Design the system and work out the bugs; set up mock operations; have a dry run. Write an RFP and solicit bids. Study the vendors - insist on a demonstration.

BUT THAT WON'T HAPPEN. The reality of time (days) and resources (money) won't permit that.

What could easily happen, however, is that a lot of time is wasted unnecessarily just trying to get started. Time that will adversely affect the quality and timely delivery of the MOST IMPORTANT, FUNDAMENTAL task listed above: COMPILING THE SUPERFILE.

If the Superfile is not in place by next summer, every other part of the campaign will be affected adversely, even to the point of outright embarrassment; and, any "hit the ground running" advantage will be lost. Everyone involved in this project will look bad including the President and Vice President.

Bill and I propose one simple plan: get started compiling the Superfile and let the other phases mesh in CONCURRENT to that effort. This will in no way affect the other phases except to ENSURE that the most fundamental feature of the project is ready.

#### COMPILE SUPERFILE:

As stated, the data compilation phase is clearly the first step to take as you can't use something you don't have. The data must be compiled in such a way as to make it SUPREMELY ACCURATE and in a STATE OF READINESS -- no if, and's, or but's.

Actual compilation must be accomplished by deciding (based on today's knowledge) what different data files to include, the order to include them, and what data (if not all) should be kept in the Superfile. Each file needs to be cleaned up and "normalized" so that all "like" pieces of data (fields) are reliably presented IN A USRABLE FORM.

Initially, the data should be kept "independent" of any specific hardware or software system in discrete, well defined fields with consistency and good definition of data. By "definition of data" we mean having an accurate "picture" of the data in each field. A simple example would be the CODE field where you have precise statistics on the "count" of each code, documentation as to the meaning of each code, and the data properly normalized so that the presentation in a product is clear and "looks good."

System independence is maintained by the capability to offload, in theory at any time, the data onto an industry standard 9-track magnetic tape and loaded onto another system (accompanied by detailed documentation, file layouts, stats on the fields, examples of data, etc.).

The DATA COMPILATION PHASE of building this Superfile is totally independent of what happens next: merging the final data with the system that will "house" the Superfile in a data structure compatible with the application programs that support the objectives of central management and various classes of users.

#### FUTURE OF SUPERFILE AND POC:

We are confident we can handle any and all phases of this project as outlined above. Remember, we have been through this before. We have demonstrated reliability, maturity, flexibility, application knowledge, and delivery of requested products without any procrastination, hedging, or sour attitude.

We have in addition to our previous campaign support for President Clinton, 16 years of a fine record with many other outstanding Democratic candidates and incumbents -- with neither a breach of security nor a single unhappy customer. We ENJOY doing it right. (Please see attached corporate profile.)

We understand, however, the responsibility that you have toward the campaign and the necessity to "go through the proper channels." We do not fear competition, we only fear procrastination and having to do a job much too fast for its own good.

We implore you to get started on the Superfile with us on a time and materials basis and a commitment to complete the job by next summer. We will put the proper resources behind it and do the job correctly. We will update you weekly on the progress; we will stand ready to deliver the data and documentation as of the "last progress report" whenever you want it should you ever want to go to another system.

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One (conservative) thought about paying for this project: You might not be aware that we do work under the auspices of the DNC on Vice President Gore's database. Could not the same thing apply in this instance?

One (wild) thought regarding paying for this project: If you were to set up a separate fund (as you mentioned), perhaps, when the time came (i.e., a reelection committee is formed), the people who contributed to this fund would be allowed to donate their "share" of the asset, to the Reelection campaign as an "inkind contribution."

Perhaps a combination of the above could be used - DNC support service costs, fund pay for hardware/software costs.

One more thought about Superfile: We hope you will not consider us out of bounds when we bring up the possible danger of having any connection between the President's official system and Superfile - even the same vendor. So that no one can claim that you have benefited by piggy-backing a system paid by public funds, it might be better to choose a second vendor (in addition to us) to make a proposal other than the current developer.

That is not to say that what you like about the official system cannot or should not be duplicated in Superfile.

Let me make it clear that it is not any unfair advantage of your WH vendor we are concerned about. Frankly, I think POC can compete very competitively in price and system and software. What we might lack in knowledge of the official system, I feel we more than make up for because of our vast experience in the application at hand and our excellent reputation with President Clinton and other Democratic candidates. We are just trying to think ahead of any possible issues that might come up and the need to avoid even the suspicion of impropriety.

We would be so proud to be a part of this project. We hope the focus goes first to the data and second to the other things. It is the data that usually gets short changed; but it is the data that is your link to those contributors and other supporters who are the centerpiece of any campaign.

We could write (and will if requested) a lot more about procedures, documentation, approach, data upgrades (after merging, normalizing, and other clean up). After obtaining a little more information, perhaps from Bric, we can give you a better idea of the general costs.

We also want to elaborate on our Address Enhancement software which I think is the key to many, many good things so far as managing the Superfile.

You must be out of breath reading this memo. There was much to say and still much that I didn't say that needs to be considered. Bill and I stand ready to respond immediately.

# THE WHITE HOUSE WASHINGTON

# OFFICE OF THE CRIEF OF STAFF Thomas F. 'Mack' Milarly

DATE: _/	NUMBER OF PAGES (including cover):
TO:	Ellen
57-7N'	MARK MIDDLETON
	-1243
हरण अधि	ER:
JOMNOWT	ton list in this formation
ر مستوری میریند	ton list in this format
	Thanks
المراجعة ال المراجعة المراجعة ال	Thanks

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NOTE:

The inform of the contained in this facsimals measage is CONFIDENCE. It and intended for the recipient ONLY. If there are any problems with this transmission, please contact the sender as soon as possible at 202-456-6797.

The Automated data can be accepted in two methods - on diskatte (3.5 or 5.25) or on tape (9 track or cartridge). The acceptable format is presented below:

- 1. Format for Name/Address data on diskette:
  - . Fixed field length/positional (See below)
  - . Sorted by Last Hame, First Name
  - . ASCII delimited (delimiter character '9')
  - . 1 record per addressee, i.e. the record size of 408 characters
- Format for Name/Address data on tape:
  - · Fixed field length/positional (see below)
  - . Sorted by Last Name, First Name
  - ASCII delimited (delimiter character '@')
  - · 1 record per addressee, i.e. the record size of 408 characters
  - . Blocked specify blocking factor
  - Unlabelled taps
  - . 1600 or better density specify desity provided

#### RECORD LAYOUT:

Data Element	Length	Position
ア大出アエス	30	1 - 30
FIRST HAME	30	32 - 51
Last name	20 €	53 ~ 72
Suppix	8	74 - 81
Spouse name	20	83 - 102
TITLE	60	104 - 163
organization	50	165 - 214
ADDRESS1	35	216 - 250
address2	35	252 - 286
address3	35	288 - 322
CITY	30	324 - 353
STATE	2	355 - 356
IIP CODE	10	358 - 367
COUNTRY	40	369 - 408

<sup>\*</sup>MOTE: Full name as one data element is NOT acceptable.

#### Anderson Report - Tab 17

#### 17001-17023: Documents pertaining to CPC payments to W.P. Malone

The Clinton Primary Committee, after receiving more than \$3.6 million in matching funds overpayments, spent some \$4.6 million on "things" other than the CPC's debts. This is discussed in Documentary With References, Tab 2, Section 34.0. Of the \$4.6 million expended on non-primary items, two things stand out: the \$2.4 million transferred to the Compliance fund and \$842,100 paid to W.P. Malone, Arkansan and person into "Pharmacy Chain Operation, Computer Time-Sharing, and Facility Management." (As stated on the letterhead shown as Doc 17001/A.

Doc 17002/B outlines the long string of payments made by the CPC to Malone which began in August 1993, one month AFTER the audit clean-up and the final amendments had been filed. At that time, the bulk of the audit was over and Clinton had been in the White House more than eight months. Nevertheless, the large payments to Malone continued into President Clinton's fourth year in the White House, March of 1996.

The FEC auditors asked the CPC to explain what services Mr. Malone performed for the primary campaign. The only answer was in the form of invoices that tersely stated: "professional services." The FEC Commmissioners asked the same question. They, too, were given the same non-informational answer: professional services. The FEC Commissioners voted that until the CPC could provide a more complete answer, the expenditure of \$842,100 could not be considered a qualified campaign expenditure.

However, the CPC's only penalty was that the \$842,100 could not be included as part of the CPC's obligations and thus, couldn't be figured in its overall matching funds entitlement. That obviously did not bother them. And, it obviously didn't bother the CPC not to respond to the FEC auditor's questions about a rather large expenditure.

Plus, Malone got to keep the money and the CPC never advised the FEC what the payments were for. Complete FEC audit discussion in Doc 17003-5/C and D. The transcript of the Malone discussion during the open meeting is included as Doc 17006-23/E. To put \$842,100 into some perspective, the total services provided by POC and the Andersons, including all bonuses, etc. did not amount to much more than \$1,000,000 for two years worth of extremely hard work by many people.

The Andersons have no documentation or information about what Malone did for the \$842,100. However, their personal opinion, in light of what Marsha Scott stated (Tab 16) about "Bill's friend from Arkansas" trying to build a database, is that perhaps some of the \$842,100 was spent on programs and data organization in preparation for the 1996 reelection effort. Who knows? Certainly not the Federal Election Commission.

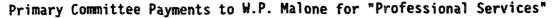
4

W. P. Malone, Inc. HURLING OF CHARLES INC. COMPUTER TIME-SHARING FACULTY MANAGEMENT

518 Clay Arkadelphia, Arkansas 71923 (501) 246-5553

17001

17-A



- > Primary Committee refused to give the FEC additional information beyond the notation on the invoice "professional services."
- > FEC Commissioners DIS-qualified the payments as legitimate (qualified) primary campaign wind down expenditures at Dec 1994 final audit hearing.
- > Malone did not have to return the money.
- > Information taken from Primary Committee Expenditure Reports.

```
    Bill Clinton nominated, Primary Campaign officially over

July 1992
                Bill Clinton and Al Gore elected
Nov
                Clinton and Gore take office
Jan 1993
                Complete set of amendments filed for Primary Committee FEC audit field work ended
July
Aug
                                              $ 50,000.00
                first Malone Payment
Aug
                                               159,695.03
Nov
                Malone payment
     1994
                Clinton begins second year in office
Jan
                                               210,081.19
Jan
                Malone payment
                                                95,644.82
                Malone payment
Mar
                Interim audit report
Apr
                Interim audit report Response
Jul
                                                93,214.90
                Malone payment
Aug
                Malone payment
                                                15,000.00
Sep
                Malone payment
                                                30,000.00
Sep
                Malone payment
Malone Payment
                                                15,000.00
Oct
Nov
                                                 15,000.00
Dec
                Final Audit Report Released
     1995
                Clinton begins third year in office
Jan
                                                15,000.00
15,000.00
Jan
                Malone payment
                Malone payment
Malone payment
Malone payment
Malone payment
Jan
                                                15,000.00
Feb
                                                15,000.00
Mar
                                                15,000.00
May
May
                Malone payment
                                                30,000.00
Sep
                Malone payment
                                                34,842.53
      1996
Jan
                Clinton begins fourth year in office
                Final Malone payment
Mar
                                                18.621.80
```

Total Paid for Malone's Undisclose "professional services"

\$842,100.27

What did Malone do? The FEC still does not know.

17002

- 17-B

The Committee is incorrect. First, the requirement is that the expenditure be made by check or similar draft drawn on an account established at a campaign depository. These traveler's cheques are not drawn on a Committee account. Further, the Committee is not accurate that the traveler's cheques are returned to Worthen Bank. They are sent to American Express. There is no negotiated instrument available for the Audit staff's review at the Committee or their depository. The requirement that checks be drawn on a Committee depository provides records for both Committee and Commission review.

Finally, the Committee states that even if the traveler's cheques are not consistent with the requirements of 11 CFR \$102.10, it does not follow that they are undocumented within the meaning of 11 CFR \$9033.11. The Committee goes on to cite the various types of documentation that may be presented under that regulation and concludes that the log and Committee per diem policy complies with two of the tests. What the Committee does not consider is that in addition to the listed documentation, 11 CFR \$9033.11 requires a canceled check negotiated by the payee. This is not possible when traveler's cheques are used.

The Committee did not explain the difference in the \$179,357 in traveler' cheques purchased and the \$159,190 the Committee claims the traveler's cheque log supports. the log didn't support \$158,000 as claimed in the response. As explained in the Interim Audit Report, although the log recorded approximately \$158,000 in traveler's cheques over \$40,000 of that amount was insufficiently explained. The Committee did not address this problem in their response.

The Audit staff concluded that the use of travelers cheques were cash disbursements in violation of 11 CFR \$102.10 since the cheques were not a check or similar draft drawn on an account established at a Committee campaign depository, and therefore, were non-qualified campaign expenses. Further, the expenditures were not documented in accordance with 11 CFR \$9033.11.

At the Commission meeting of December 15, 1994, the Commission decided to permit the Committee to consider amounts of \$100 or less, per transaction, as a qualified campaign expense. As a result of this decision a total of \$166,658 was determined to be non-qualified campaign expenses.

17003

d W.P Malone, Inc.

Invoices for leased equipment for February, March and April, 1992 totaled \$40,710. Committee records indicate three payments were made, \$10,000 on March 27, 1992, \$15,000 on June 1, 1992 and 15,710 on August 25, 1992, which paid the balance in full. In addition, on July 10, 1992 the Committee paid \$4,850 which appears to be a partial payment on the April, 1992 billing. Therefore, \$4,850 represents an apparent duplicate payment. The

invoice associated with the \$4,850 check is the same invoice associated with the three payments discussed above. The Interim Audit Report concluded that if the Committee did not provide additional invoices supporting the \$4,850, it would be considered a duplicate payment, and the amount would be included in section 1 of this finding. Additional issues with respect to this vendor are discussed in section 2 of this finding.

The Committee did not provide any additional information in its response to the Interim Audit Report; therefore, the \$4,850 has been included in section 1 of this finding.

The Audit staff did not review the Committee's Third Quarter 1993 FEC Disclosure Report at the time of the audit fieldwork. However, on that report, the Committee reported paying W.P. Malone an additional \$63,000 in consulting payments. The Committee did not report any debt owed to this vendor on the Second Quarter 1993 FEC Report. As mentioned in Section 2. of this finding, all the equipment bought from this vendor was sold to the General Committee. The Audit staff requested additional documentation that established that the \$63,000 in payments were in connection with the campaign for nomination. Pending receipt of that documentation, the amount was considered a non-qualified campaign expense.

In response to the Interim Audit Report, the Committee provided a copy of a check to this vendor for \$50,000 and an invoice from the vendor that states the amount is a "Deposit toward professional services for June through September, 1993." The Committee did not explain the \$13,000 difference but the Fourth Quarter 1993 FEC Disclosure Report shows a voided check to the vendor of \$13,000. On the same report the Committee disclosed another \$159,695 payment to W.P. Malone. The Committee later sent a copy of an invoice which stated only that the payment was for June through September, 1993 professional services. After the Interim Audit Report was sent to the Committee the Audit staff reviewed the 1994 Disclosure Reports and noted additional payments to this vendor for \$210,081 and \$95,645. The Audit staff requested additional documentation. The Committee provided an invoice for the \$210,081 that states only that the amount is for professional services for October, November, and December 1993. The Committee also provided a copy of the check and an invoice for the \$95,645, which was for professional services for the months of January and February 1994. Also, on the Second Quarter 1994 FEC Disclosure Report, the Committee disclosed a debt to this vendor of \$93,436 for computer consulting.

17004

The Committee has not provided any detailed explanation as to what specific services this vendor is providing to the Committee other then consulting payments and how those services relate to the wind down activity of the Committee. The Committee has continued to pay Public Office Corporation for services during the winding down period for database management,

preparation of FEC reports, equipment rental, and other services. The Audit staff has not included the additional payments and debt to W.P Malone, Inc. totaling \$608,857 in winding down expenses on the NOCO statement in Finding III.C.

17005

17-D

# FEDERAL BLECTION COMMITTEE OPEN MEETING

Thursday, December 15, 1994

Transcribed From Provided Tapes By:

CASET Associates, Ltd. 10201 Lee Highway, Suite 160 Fairfax, VA 22030 (703) 352-0091

17006

· 17-E

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#### PARTICIPANTS:

Democratic Commissioners: Scott Thomas

Danny McDonald, Vice Chairman

John McGarry

Republican Commissioners: Trevor Potter, Chairman

Joan Aikens Lee Ann Elliott

Staff: Lawrence Noble, General Counsel

Joe Stoltz Bob Costa AFTERNOON SESSION (1:30 p.m.)

COM. POTTER: Good afternoon. The open meeting of the Federal Election Commission of Thursday, December 15, 1994, will again come to order. We continue with the discussion of the report of the audit division on the Clinton for President Committee. When we left for lunch we had concluded our discussion of the traveler's checks under the general category of nonqualified campaign expenses. We now move to the payments to W.P. Malone, Inc.

If the audit staff could explain these payments and why they believe they are not qualified campaign expenses, that would be helpful. Russ?

Agenda Item: Nonqualified Campaign Expenses

RUSS: This starts on page 71. In the first paragraph we still have a small duplicate payment of \$48.50, which was discussed in the earlier finding. At the time of the interim audit report we picked up an additional amount to W.P. Malone for \$63,000 in the third quarter of 1993.

W.P. Malone's involvement with the primary, as far as we could tell, was finished after the day of ineligibility. He had leased the campaign computer equipment, and was instrumental in selling the equipment to the campaign at the end, but there were no transactions -- or he was incurring no expenses from the date of

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In the interim audit report we made an inquiry concerning the \$63,000, and since then W.P. Malone, Inc. has received additional amounts. As of the date of this report, which is June 30, 1994, the amount is \$608,000. Later on, as part of the NOCO in the footnote, we go into a problem we are having with the third quarter of 1994 report. In that report there is an additional \$138,000 paid to W.P. Malone.

We are trying to find what he is providing in the way of winding down expenses, but to date we haven't received really anything other than he is providing professional services to the Committee.

COM. POTTER: So to summarize, the campaign is showing at the moment, and you are reporting here, \$608,857 of expenses to W.P. Malone for winding down. Your objection to that is there is no documentation of what that is for, is that correct?

RUSS: Well, the documentation we have just says "professional services." We don't know what he is doing for this money in the wind down period. The impact on this is right now we are not recognizing this in the winding down expenses we have on the NOCO.

COM. POTTER: What sort of documentation would you expect to see to characterize it as winding down?

RUSS: I would think we would like to know what he

17009 4

is providing in the nature of the winding down area that would total \$740,000.

COM. POTTER: Discussion? Com. Aikens.

COM. AIKENS: A quick question or two. Russ, he provided computer equipment, isn't that correct?

RUSS: That was at the end of the primary. The transaction that was detailed earlier in the prefunding, that was, as far as we could tell, the end of his involvement with the primary.

COM. AIKENS: Does he have a business?

RUSS: W.P. Malone --

COM. AIKENS: It's just called W.P. Malone?

RUSS: W.P. Malone, Inc.

COM. AIKENS: Which is in the business of providing computer equipment? Do we know he is providing professional services, but we don't know what his profession is?

RUSS: He is involved in numerous businesses in Arkansas. The computer -- well, I could read from his letterhead. It says, "W.P. Malone, Inc., Pharmacy Chain Operation, Computer Timesharing Facility Management."

COM. AIKENS: Okay. That's a nice title.

COM. POTTER: So what you would like to see the Committee provide is a detail of the services and the bills and precisely what this money was paid for?

RUSS: The Committee has already provided invoices which say he is providing professional services to the Committee, but we don't know what he is doing for that money.

COM. POTTER: Com. Thomas.

COM. THOMAS: Just by way of comparison, when you see in your records a billing from a law firm or from an accounting firm and it says "for professional services," do you treat that as nonqualified?

STOLTZ: Generally, when you are dealing with known vendors who fit into what is going on in a campaign, sometimes that's all you get, and it doesn't raise a question. We are I guess assuming that this has something to do with computer services, since that was the area in which W.P. Malone, Inc. provided this Committee services earlier.

With services beginning in the wind down period at a time when the Committee is not doing fund raising, when there were no really significant amended reports to be filed, when they have sold all their computer equipment to the general election, if this is computer services, what we don't see is how this relates to the Committee's effort at winding down and closing out their activities.

With some more information, it may become apparent, but right now the connection is not apparent.

That will vary. If we see payments to the Committee's counsel, we have a pretty good idea how that relates to the campaign, even if they don't break it down hour by hour. In this case, we don't see the connection where it fits, and so we would like to have some more information on precisely what he is doing, and how it relates to the winding down effort.

COM. THOMAS: Run his title by me one more time, the title of his company.

STOLTZ: W.P. Malone, Inc. is the name of the company. Just on the letterhead underneath the name is says, "Pharmacy Chain Operation, Computer Timesharing Facility Management." At the time we were there, they weren't renting space from him.

COM. THOMAS: There was a computer connection, however?

STOLTZ: There had been earlier, yes. They rented a computer system from him through the vast majority of the primary, and then purchased some things from him near the end of the primary. Then they paid him some fees for some software services and for helping to move the computers from their old location to their new location.

COM. THOMAS: When you saw the payments to him for software services, was the documentation there different such that you consider that qualified, because the

documentation was somehow different?

RUSS: Well, for one thing, the dollar amount was much smaller. I believe it was in the neighborhood of \$4,000. There were two amounts broken out. I can't recall exactly what it said, but it was something like for the software and other support type services, but in total. It also covered a specific period of time, July 1-July 16 on the invoice, and it was for \$15,000. Since the Committee had acquired all that equipment, we didn't see where that was that unusual an expense in that period of time.

COM. THOMAS: So for about a two week period it looks like about \$15,000 was charged for computer services, professional services, or is part of that the professional services?

RUSS: That would be in addition to his normal lease payments for the equipment, and there may be some services -- what was in his normal billing, which was like July 11-July 10.

STOLTZ: Again, though, this is at a period of time when the Committee is operating and acquiring and setting up a new computer system. So that fits with what was going on in the campaign at the time the charges were incurred; \$740,000 over a 15 month period when the Committee is fairly well wound down doesn't seem to fit very well in what was going on in the campaign at the time.

com. Thomas: Well, as I look at your report, it indicates that the information we have is that these were for professional services from June through September of 1993, and then another payment covered -- I guess that first one was for a deposit toward professional services for June through September. Then the next one, \$159,000 was for I guess again, professional services, June-September 1993. Then the next one was a payment for \$210,000, and then another one for \$95,000. Those covered in essence October, November, and December of 1993, and then January and February of 1994.

It looks to me like they might be able to come back fairly easily and explain that this was some sort of continuation of computer consulting professional services, but the response of the Committee counsel is a little bit bare. They were covering only the \$63,000 payment apparently at the time they submitted the Committee response, so maybe they didn't think there was going to be much question about this ultimately.

It doesn't really go any further and explain the nature of the professional services. So I am gathering that if in fact they relate to the campaign, and are for computer consulting, that that issue will probably be cleared up. If it is in fact cleared up, is this what you are now considering a nonqualified that is showing on the NOCO

analysis as a nonqualified payable?

STOLTZ: It is. It is not included in the accounts payable number, which would be the treatment that a nonqualified campaign expense after the date of ineligibility would receive.

COM. THOMAS: So if it turns out they can document that this was qualified, they can then add it on to the NOCO calculation, and that will change your entitlement calculations?

RUSS: Certainly.

COM. THOMAS: Thank you.

COM. POTTER: Mr. Vice Chairman.

COM. MC DONALD: Thank you, Mr. Chairman.

Let me just ask, Joe, do you have Attachment 5, page 2 of 3, 117 at the bottom?

MR. STOLTZ: Yes.

COM. MC DONALD: Does not some of that get to some of your concerns?

MR. STOLTZ: No, this deals with the earlier activity.

COM. MC DONALD: The May 30th through the present?

May 30, 1993 to the present? Am I looking at the right thing?

MR. STOLTZ: That is the description of the computer system that was acquired towards the end of the

primary campaign. Part of that was acquired from W.P. Malone; part of it was acquired other places, and was subsequently sold to the general election campaign. But there was a substantial period of time when there were no services provided by W.P. Malone.

COM. MC DONALD: Refresh my memory, what was the period of time?

MR. STOLTZ: They paid for charges in July I guess of 1992, and then we saw payments again starting in June of 1993. Now some of the July charges were paid later than that, but that was the incurrence of the bill.

COM. MC DONALD: Yesterday when we had this discussion about billing practices in general it said is -- I mean, I don't have the sense of that. Do they do that based on the kind of work they are turning out, waiting to see what they've got or they don't have, or do we know?

MR. STOLTZ: I'm not sure I follow the question.

COM. MC DONALD: When you are making these payments, you say from July of 1992 I gather, and then there was another one. Did you say they weren't made again until 1993?

MR. STOLTZ: That is correct.

COM. MC DONALD: What is your sense of that? Is

that a determination of what sort of wind down it would
take? Are they assessing that, or do you have any sense of

MR. STOLTZ: I don't know. They filed a whole series of amended reports in early July of 1993, however, at that time I believe most of the reporting was being handled by the Committee in house on the computer system that had been acquired, or was still being handled through Public Office Corporation, who had handled it through the primary campaign. I couldn't swear to you which one it was. These payments seem to relate to a period roughly beginning then, and going forward.

COM. MC DONALD: Beginning in 1992?

MR. STOLTZ: Beginning in 1993.

COM. MC DONALD: In 1993. July of 1993?

MR. STOLTZ: I guess it starts with June through September is the first billing.

COM. MC DONALD: Which might truly in fact coincide with the wind down process, I gather.

MR. STOLTZ: The wind down process, or at least the bulk of the activity would appear to be fairly well behind them by then. We were still there, but nearing the end of our process. The amended reports were filed.

COM. MC DONALD: When do you think they started that wind down process?

MR. STOLTZ: Well, the wind down process starts right after the convention, and continues until such time as

they finish, however, normally you would expect to see it tapering off as time goes on, rather than --

COM. MC DONALD: That's absolutely right. What is your experience in that regard?

MR. STOLTZ: Well, particularly with respect to this vendor, we don't see it tapering off, we see it starting a year after the wind down, or almost a year after the wind down period starts, and then growing for another -- or starting at a fairly substantial level, and continuing for another 15 months.

Now in making the recommendation we are making, we are not saying that there is no way that this could be related to the wind down. What we are saying is it doesn't seem to fit the pattern, and we would like some more information before we will know how it fits, or if it fits.

COM. POTTER: Any further discussion on the Malone item?

COM. AIKENS: Joe, what you are saying is that during the wind up of the primary season, the reporting period, about \$40,000 was paid to this vendor, is that right, approximately?

MR. STOLTZ: During?

COM. AIKENS: To transfer to the general -- to transfer the equipment and all to the general?

MR. STOLTZ: There were a number of payments

besides the stream of rent payments all the way through. This was the vendor that they paid \$137,000 right at the very end of the primary to acquire some of the assets, and there is a \$33,000 bill for other types of services he provided, one of which was helping to move the computer system from their old offices to their new offices.

COM. AIKENS: Okay, I got all that. Then a year after that, in June of 1993, and from then until now they have paid the same vendor over \$700,000?

MR. STOLTZ: That is correct.

COM. AIKENS: I sure would want to know what it was for.

COM. POTTER: So at this stage what you are recommending is you leave this here for them to produce information on precisely what the services were?

MR. STOLTZ: That is correct.

COM. POTTER: If it is all right, I will move on.

People can come back to it if they think of additional questions they have. The next section here is miscellaneous. There are a variety of smaller items that the audit staff is recommending be nonqualified. Could you maybe just summarize those and see if there are any specific questions?

Agenda Item: Nonqualified Expenses - Miscellaneous

RUSS: If you go to Attachment 8, page 1, we have already talked about the \$37,500, the \$608,000 to W.P. Malone, and the \$179,000 is the Worthen National Bank for the traveler's checks. Everything else on that page is what is in this section.

COM. POTTER: So this is some sort of cash disbursement: lost equipment; parking tickets; fax machine; the New England Telephone for \$7,000.

RUSS: The Sheraton Manhattan and the New England Telephone we are requesting additional information on. We just don't have any documentation to support those amounts.

COM. POTTER: You don't have bills that they would have paid?

RUSS: If you refer on page 73, there is a short paragraph there. Our problem is the payments that go to these two vendors, it appears that everything owed these vendors are paid. So these additional amounts of \$64.89 and \$7,000, they may in fact have additional liabilities, but we can't establish it. It could be the same as before, where it is a duplicate or overpayment. We just don't know at this stage.

COM. POTTER: Any questions on those items? Com. Elliott?

COM. ELLIOTT: Do I understand that these vendors have been paid? The vendors think they have been paid, it

is just that there is no internal record? When you say there is no recognition of payments in these amounts, on whose part?

RUSS: From the documentation we got, it appears that everything owed to these vendors has been paid. These are just additional amounts going out to these vendors.

COM. ELLIOTT: For which there are no vouchers, is that correct? There is just no documentation at all?

MR. STOLTZ: Not for these amounts, right.

COM. ELLIOTT: Not for these amounts.

COM. POTTER: And what you were saying is that may mean that they have been paid by mistake, or they paid them twice, or something like that, but you don't know?

MR. STOLTZ: That's correct.

COM. POTTER: Anyone want to try their hand at a motion for this recommendation? Do you want to go back and look at any of this first? What we have in the nonqualified expense area is the audit division recommendations, which the Commission altered by motion on the traveler's check issue. So it won't be the same figure. They will have to make that recalculation.

Mr. Vice Chairman?

COM. MC DONALD: Just on that point, did somebody do it in the 30 minutes just by chance?

MR. STOLTZ: I ran the tapes, and assuming that I

didn't make too many gross errors in the tape, because I didn't have a chance to go back and check my work, I got a figure of \$167,000 from the total of the \$20,000 that isn't supported, and then all of the amounts over \$100.

COM. MC DONALD: Thank you.

COM. POTTER: Com. Thomas?

COM. THOMAS: I move that we approve recommendation three, subject to the revisions necessary to incorporate the changes regarding the traveler's checks.

COM. POTTER: Com. Thomas, I am reminded that this recommendation also includes -- and I don't think we have had a separate motion on it, because it all would have been in this -- didn't we have a motion on agenda document 94130C, which was the whole prefunding? I think we already did that.

PARTICIPANT: Those figures have to be amended here as well.

COM. POTTER: We did amend that in the motion? I'm wrong.

PARTICIPANT: Okay.

COM. POTTER: I have been counseled wrongly.

PARTICIPANT: Sorry about that.

COM. POTTER: Com. Thomas has moved approval of recommendation three, except that the figure will be adjusted to reflect the commission's earlier vote on the 17022

calculation for the traveler's check monies. Is that an accurate statement?

[Flip Tape C-2, Side A to Side B, text lost.]

COM. POTTER: Madame Secretary, the motion passes
by a vote of six to zero.

[Whereupon the motion was unanimously passed.]

COM. POTTER: That brings us to as I see it, receipt of matching funds in excess of entitlement.

Russ?

RUSS: Before we get to that, I would like to just mention, on the NOCO on page 76, we show the net campaign obligations of debt of \$7,878,678.

COM. POTTER: Where are you?

RUSS: Page 76.

COM. POTTER: The figure you have just stated is \$7,878,678?

RUSS: At the bottom of the page.

COM. POTTER: Yes?

RUSS: Footnote H, which starts on page 77 and finishes on page 78, the Committee has filed -- this report itself cut off at June 30, 1994. The Committee has filed a third quarter 1994 report, and their winding down expenses have increased substantially from what they provided as far as the estimates that came in at the time of the interim audit report.

### **Anderson Report - Tab 18**

18001-18011: Documents pertaining to payments to David Watkins

This section contains an example of another false statement made to the FEC by the CPC.

It involves an expenditure of \$37,500 initially reported as "consulting fee" (shown in Tab 18, Doc 18002/A), was later termed "payment for costs of winding down campaign" by Lyn Utrecht (shown in Doc 18003/B), and finally, was uncovered as an illegal payment, using federal matching funds, to an attorney who then passed the money on to Kimberly Moore, who alleged sexual misconduct on the part of David Watkins (as shown in Doc 18006&7/D). FEC audit discussion shown in 18004/C.

This is extraordinary. The payment was fortunately determined to be an unqualified primary expenditure (meaning unqualified for the FEC's matching funds to pay for part of it) but the payment itself was not returned (Doc 18011/G).

But, even more interesting are payments the Compliance fund made to David Watkins of \$25,000 when he was still an employee at the White House. (Shown in Document 18010/F.)

Add to that the string of \$3000 payments which were eventually uncovered for a total of \$58,000 paid to Watkins, before and after he left the White House. The newspapers commented on that anomaly (as shown in Doc 18008/E, front and back sides of paper). Other political reporters noticed the unusual payments as well. All of these payments (shown in 18001/1) were allowed by the FEC and went, as far as anyone knows, unquestioned.

RE: David Watkins

Sept 92 Sexual Harassment Payoff to Kimberly Moore 37,500

<b>Payments</b>	to	Watkins:	
I GYMCHUS	···	MOCKINO.	

\$25,000	still at White House)	3/9/93	From GELAC
3,000 3,000 3,000 3,000	(after left WH)	3rd Qtr	
3,000 3,000 3,000		4th Qtr	
3,000 3,000		1st Qtr	
3,000 3,000		2nd Qtr	
58,000			

23053 Lanark Street
West Hills CA 91304
Travel Expense

Consulting Fee

09-08-92 PRIMARY

57.45

37,500.00

SUBTOTAL of disbursements this page - 55,305.58

18002

18-A

796-1994

SMEMEN

March 24, 1994, \$14,420 was refunded by the General Committee. the remaining \$5,646 is being transferred this week.

### 3. Other Non-Oualified Campaign Expenses

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### a. Attorney Client Privilege

The auditors have questioned a Committee payment of \$37,500 to Kathlyn Graves Escrow Agent. Attached is a copy of a letter from the Committee's General Counsel, Anthony S. Harrington, providing additional details regarding the payment. Exhibit 30. Based on the information provided, this payment constituted a qualified campaign expense under 11 C.F.R. § 9034.4(a)(3). As described in Mr. Harrington's letter, the payment was for the costs of complying with the post election requirements of the Act and for necessary administrative costs associated with winding down the campaign.

### b. Campaign Bonuses

The auditors have questioned Committee bonuses in an aggregate amount of \$237,750 and suggest that these payments were not "in connection with the campaign for nomination." This assertion is absurd. The Commission has never before stated that it is not a qualified campaign expense to pay bonuses to staff and consultants for work performed on the campaign. As the Commission is well aware, many staff and consultants to campaigns devote extraordinary time and effort to the campaign, and often are undercompensated. During the course of the primary campaign, the Committee employed over 800 staff and consultants, and awarded bonuses only to 21 individuals or firms.

The Committee has attached affidavits from David Watkins, Rahm Emanuel and Amy Zisook clearly establishing that the bonuses were obligations incurred prior to the date of ineligibility based on services rendered prior to the date of ineligibility or, in a few instances, for additional windown, <sup>14</sup> and providing additional detail regarding the reasons for each bonus and the factors on which the amount was calculated. Exhibit 31.

The Committee could find no instance of the Commission disallowing bonuses, but did find instances of the Commission permitting other rewards to staff after the close of the campaign. For example, the Commission has considered severance pay after the date of ineligibility as a qualified campaign expense, as well as payment of the costs of a staff party

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While the Committee believes that bonuses are qualified campaign expenses, whether or not agreed to prior to the date of ineligibility, in each of these instances, the bonuses were an outstanding obligation of the Committee as of the date of ineligibility and were included in the Committee's NOCO calculations at that date. The auditors have seen copies of the Committee's workpapers reflecting the bonuses as outstanding Committee obligations.

shown on the Committee's NOCO statement at III.C. as accounts receivable and are non-qualified campaign expenses subject to a ratio repayment unless the amounts are reimbursed to the Committee.

Also, as noted previously, the candidate's entitlement to post date of ineligibility matching funds was adjusted in Section III.D. below. That adjustment causes the point at which the Committee's accounts no longer contains Federal funds to occur later than was calculated in the report considered by the Commission on December 15, 1994. It is now calculated that all non-qualified campaign expenses discussed in this section were paid while the Committee's account contained Federal funds.

### Recommendation #2

1.1

As a result of the Commission's decisions, the Audit staff recommends that the Commission make an initial determination that the Candidate is required to make a pro rata repayment to the U.S. Treasury of \$154,740 [(\$398,480 + \$130,824 + \$69,660)  $\times$  .258346] pursuant to 11 CFR \$9038.2(b)(2). This amount may change if the Committee demonstrates that the Candidate was entitled to a greater amount than is calculated at Section III.D.

### 3. Other won-qualified Campaign Expenses

### a. Kathlyn Graves Escrow Agents

The Committee made a \$37,500 payment on September 2, 1992, to Kathlyn Graves Escrow Agents. The only documentation in the Committee's records was a canceled check and a garbon copy of the check with the notation "settlement". According to the Committee, payments were made on behalf of the Committee for consulting work. The terms are confidential and tan't be made public. There is a written agreement but the terms of the agreement can't be made public. The terms of the agreement preclude disclosure. During fieldwork the Committee requested the attorney who drew up the agreement provide a statement to clarify the nature of the agreement. This statement was requested again by the Audit staff at the exit conference.

In response to the exit conference and the Interim Audit Report, the Committee submitted additional reformation but it did not establish this payment as a qualified campaign expense.

### b. Campaign Bonuses

The Committee paid bonuses to various staff members, firms, and consultants after the date of ineligibility. According to the Committee these bonuses were determined prior to the date of ineligibility. Any contracts the Committee had with these individuals did not cover these bonuses. The Committee stated these were orally agreed to, between the Committee and the

individual. During the fieldwork and at the exit conference the Committee stated they would provide statements with information about how the amount was arrived at by the Committee. The statements were to be from either the individual that received the bonus or the Committee person that arrived at the amounts. There were a total of 21 entities that received bonuses totaling \$237.750.

After the exit conference presentation of this matter, the Committee submitted memos from David Watkins for each of the people receiving a bonus. Basically, each memo gave the person's position in the campaign, stated that Mr. Watkins authorized the bonus and that each bonus was determined prior to the Democratic National Convention. Some bonuses were based on the recommendation of the immediate supervisor, such as David Wilhelm, Rahm Emanuel, and Keeley Ardman. These memos do not establish that the bonuses were in connection with the campaign for nomination.

In response to the Interim Audit Report, the Committee states that it could find no instance when the Commission did not permit bonuses. The Committee states that it does find instances of the Commission permitting other rewards to staff after the close of the campaign. The response also states that the Commission has considered severance pay after the date of ineligibility and the costs of a staff party after the election as qualified campaign expenses. The Committee did not cite any specific cases in their response.

In addition, the Committee submitted information on the individuals and firms that received bonuses. For Carville and Begala, the Committee submitted an addendum to their consulting contract. According to this addendum, dated March 3, 1992, the Committee would pay the firm a bonus of \$87,500 if the candidate was nominated by the Democratic National Convention. The Audit staff notes that at the end of fieldwork the Committee stated there were no addenda to this contract. In the Audit staff's opinion, the Committee has established a contractual liability that was incurred prior to the date of ineligibility, and the payment to Carville and Begala is therefore a qualified campaign expense.

The Committee also submitted an affidavit from Rahm Emanuel. His affidavit states that he was responsible for developing and implementing the Committee's national fundraising campaign. According to the affidavit, part of Mr. Emanuel's employment agreement provided for a performance based bonus plan. The agreement provided for a bonus to be paid if fundraising performance exceeded campaign goals. The affidavit explains that the Committee and Mr. Wilhelm honored the employment agreement and provided Mr. Emanuel with bonus payments of \$52,000. Neither Mr. Emanuel or the Committee provided any written agreement.

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## ton Campaign Settled

THE WASHINGTON POST

## Harassment Complaint

By Sharon LaFraniere and Ruth Marcus Washington Post Staff Writers

One of the best-kept secrets of Bill Clinton's 1992 presidential campaign was its use of \$37,500 in political contributions to settle a sexual harassment allegation against one of Clinton's top aides.

Only now, 21/2 years later, are details emerging of the charge against David Watkins, who went on to become a senior White House official, and the campaign's extensive efforts to keep a female employee's allegations out of public view. As campaign officials hoped, the election was long over by the time the payment caught the attention of the Federal Election Commission, which challenged the use of taxpayer funds to finance part of it.

The campaign listed the expense as consulting fees" on its FEC filing. Former campaign officials defend that description, saying the campaign contemplated that the woman would consult with the campaign about reconstructing some of its records as part of the settlement.

Lawyers said they do not know whether she continued to do work for the campaign. And given the dearth of information the campaign provided, the FEC has ordered it to repay \$9,675 in federal funds that were used in the payment. The amount is a small part of a total \$270,380 in campaign funds that the FEC has ordered the Clinton campaign to refund the Treasury Department because of failure to justify or document expenses. But the payment highlights an intriguing question rarely addressed by the FEC: How accurate must campaign officials be in describing how contributions are spent?

Federal campaign laws require candidates to make public filings of all receipts and expenditures and to document the use of all taxpayer funds allocated to presidential candidates. The funds are generated by the \$1 checkoff for campaign financing included on federal income tax forms.



DAVID WATKINS . . . allegedly harassed woman

Elizabeth Hedlund, who follows FEC issues for the Center for Responsive Politics, said: Just to list consulting fees was misleading. The purpose of campaign disclosure rules is to have the public see how money is being raised and spent, before the election. To the extent that the public doesn't get the true story of where the money is going, the law isn't being observed."

But campaign counsel Lyn Utrecht said that in dealings with the FEC, We have told the truth about what the agreement was about." She added: The FEC has no problem with what we've said to them . . . . We told the FEC as much as we thought we could tell the FEC."

The woman in the case, Kimberly Moore, head of a Little Rock accounting firm, hung up when a reporter called her and did not respond to written requests for comment. Watkins, who was fired as White House adminintrator in May for misusing a presidential belicopter, did not respond to repeated telephone calls.

But an account of how the campaign reacted to Moore's allegation can be pieced together from former campaign aides, administration officials and others knowledgeable about the situation. These sources con-

firmed Moore's identity and described the campaign's actions on the condition that they not be named.

Moore joined the campaign's fiveperson accounting division in late 1991. A certified public accountant, she headed the unit, one former employee said, and reported to Watkins, a former Arkansas advertising executive who was both the campaign's chief financial officer and deputy campaign manager for operations.

Co-workers said Moore complained to them at the end of 1991 that Watkins on occasion made sexually tinged remarks and one sexual advance while the two searched for staff apartments. When she did not respond, Moore told others, Watkins began complaining about her job performance.

Moore hired a lawyer and took her allegations to campaign officials. Christine Varney, the campaign's counsel, and outside lawyers at Hogan & Hartson investigated her allegations

As an interim measure, campaign officials moved Moore out of Wattins's operation and into the campaign's field division, where she helped the campaign close out its operations in some states.

Watkins denied Moore's allegations, but that did not limit the potential political damage the campaign faced if they had they become public. Although Clinton was not involved in the charges, the issue of sexual conduct was explosive. Gennifer Flowers's charge that Clinton was unfaithful to his wife for 12 years was considered one of the reasons Clinton failed to finish first in February's New Hampshire presidential primary, and questions about his alleged womanizing continued to plague him.

Doug Heyl, the campaign's southern field director, said Moore worked in the field division for at most a few months, and FEC records show she quit collecting her salary after June 1992. Craig Smith, who headed campaign field operations, said: "As I recall, she said she had another job."

Ultimately, campaign attorneys took the position that while Moore would not prevail if she filed suit, it was easier, cheaper and politically smarter to settle the case. They figured a settlement eventually would become known, but probably not until

sources has the vas supposed to help recognification of interest days.

How pages work was expected and whether she did any of it is unclear. Asset is known provided consulting services. Utrecht, the campaign I lawyer said. I don't even know the assewer to that question.

Other campaign officials said they knew of no work that Moore did for the campaign after mid-June.

Moore's monthly salary ranged from \$2,700 to \$2,900, according to campaign records. If Moore was paid for four months of consulting work, as the campaign later told the FEC, the \$37,500 she received was triple her previous salary in the field and accounting divisions, and far more than David Wilhelm, the campaign manager.

The campaign sent the \$37,500 check to Kathlyn Graves, a lawyer at the Little Rock law firm of Wright, Lindsey & Jennings that handled the payments. It was signed by Watkins and Wilhelm, and included the notation "settlement." Campaign funds were used because campaign lawyers contended that was the only legal source for the money, anything else

would constitute the fund and vio-

only a few campaign officials were informed of the arrengement, including Wilhelm and Eli Segal, the campaign chief of staff. Robert A. Farmer, the campaign treasurer who now serves as Clinton's U.S. consul general in Bermuda, signed the campaign's FEC reports but said in a recent interview, "I'm not familiar with this and haven't talked to anybody about it, during the campaign or after the campaign."

The settlement barred Moore and campaign officials from discussing Moore's allegation publicly, a provision that both sides wanted. If Moore breached the confidentiality clause, she had to return the money, a standard provision in such agreements.

The payments from Graves to Moore were stretched over several months on the theory that she would be even less likely to talk if she was expecting another check, as well as on the expectation that she would be performing consulting work.

The campaign's October FEC report listed the expense, naming Graves as escrow agent and payee and the purpose as "consulting fee." When the expenditure was challenged during an FEC audit that began in 1993, campaign lawyers explained that Graves was making the consulting payments.

The Clinton campaign committee wrote the FEC that "the payment was for the costs of complying with post election requirements of the Act and for necessary administrative costs associated with winding down the campaign."

The campaign also gave the FEC a letter from Anthony S. Harrington of Hogan & Hartson, who drew up the settlement. The Nov. 4 letter said: "The payment in question was made to a former employee for transitional consulting services to be provided to the [campaign] committee over a period of approximately four months." Harrington wrote the FEC a second letter about the agreement, but the campaign asked for it back, because it did not want it to become public, according to Utrecht.

FEC auditors decided the information was not enough to justify the use of federal funds, and with the repayment of the money, the commission has apparently closed the matter. The FEC can ask the Justice Department to investigate if it suspects a campaign has deliberately lied about the purpose of a payment, but that rarely happens. In general, Trevor Potter, an FEC commissioner, said: "We are an agency that has far more cases than it has resources."

Special correspondent Benjamin S. Abramson contributed to this report.

## Fired White House Aide Got Retainer

## From Clinton Campaign

By Ann Devroy
Weshington Post Staff Writer

David Watkins, fired from his White House job last summer for using a presidential helicopter to take him golfing, still managed to end up ahead of the game, with a \$3,000 per month retainer from the Clinton campaign for most of the past year.

Watkins, an Arkansas pal of President Clinton's who has a played a central role in three embarrassing chapters of the administration, was put on the retainer last July, about six weeks after he was fired from his post as director of the White House Office of Management and Administration. Watkins had ordered up a presidential helicopter to take him to

a Maryland golf course that he said he was trying out for the president.

When the golf trip and presidential helicopter were captured by a local photographer, a chagrined White House moved quickly to eject Watkins from his senior post. Watkins went, but not without a fight, which enraged many of Clinton's aides who subscribe to the rule that staff members should protect the president, not embarrass him.

Ordered to repay the \$13,679 cost of the trip, he refused. Angry White House aides passed the hat to spare the taxpayers, but eventually Watkins gave in and said he would leave without further fuss and repay the cost.

Watkins also played a role in the 1993 mass firing of the White House travel office personnel, an event that an internal White House investigation termed improper and inept. And he was sued for sexual harassment by a female accountant who worked on the 1992 Clinton presidential campaign, resulting in the revelation this year that the campaign had agreed to a settlement in which the woman was paid \$37,500 under a confidential agreement in which no wrongdoing was admitted.

Business Week, which has kept a close eye on Watkins, reports on the retainer in its issue out on July 3. Clinton campaign general counsel Lynn Utrecht said the more than \$30,000 paid to Watkins over the past year was not a payoff to get him to leave the White House and reimburse the helicopter cost. "I would

not subscribe to that characterization," she said.

Utrecht said Watkins was paid the retainer because of his familiarity with campaign payments based on his administrative job in the 1992 campaign. "He was familiar with all the vendors and employers and we needed his assistance" in answering questions from the Federal Election Commission for the audit it conducts on all presidential campaigns, she said.

Utrecht said she could not say how many hours Watkins worked, where the idea to hire him originated or why he only became necessary shortly after he was fired. She emphasized that his knowledge of the administrative side of the Clinton campaign was "very valuable" in an-

. .

swering FEC questions and that no one else had that detailed knowledge.

The FEC eventually ordered the campaign to refund \$1.4 million in public funds to the government because of improper or insufficient justification of expenses. The campaign also had to refund \$9,675 for the sexual harassment settlement, the share of the payment provided by taxpayer funds through the matching-funds financing of presidential campaigns.

Besides getting his retainer from the Clinton campaign, Watkins has been employed since last year as vice president of corporate communications for Callaway Golf Co., a golf club manufacturer based in California.

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# The Washington Post

AN INDEPENDENT NEWSPAPER

#58,000 -

### Mr. Watkins's \$30,000 Reward

AVID WATKINS was the director of the White House Office of Management and Administration who, a little over a year ago, took a couple of government helicopters out to a country club near New Market, Md., for a round of golf. A White House aid explained that it was all in the course of duty, since Mr. Watkins and his golfing buddies needed "to familiarize themselves with all aspects of the course" in case the president wanted to play there. The explanation didn't go down very well, and Mr. Watkins was forced out of his job. At first, he didn't want to reimburse the government for the \$13,679 the chopper trip cost. White House aides knew that letting the voters pay was a bad idea, so they unhappily passed the hat to reimburse the taxpayers themselves. Mr. Watkins eventually gave in, paid the cost himself and left the White House.

Would that the story ended there. But Mr. Watkins was back in the news this week. It turns out that after he left the White House, he was put on a \$3,000 a month retainer to the Clinton-Gore campaign and was paid more than \$30,000 by the campaign. (That more than paid for that helicopter.) A payoff of some sort for quitting? "I would not subscribe to that characterization," said Lynn Utrecht, the Clinton campaign's general counsel, carefully. The White House explained as follows: "The arrangement by which he provided services for his specific expertise, which dealt with his knowledge of contracts and business that occurred during the transition, was helpful and was

warranted." Can it be that Mr. Watkins's "specific expertise" about those contracts was not needed until after he had left the White House under a cloud? That's one question. Here's another. Will the small donors to the Clinton campaign be pleased to learn that their money is being used to put Mr. Watkins's skill and knowledge to work? (The campaign insists that no taxpayer matching funds were involved.)

This is not the first time the campaign kitty has bailed Mr. Watkins out. He had been sued for sexual harassment by an accountant who worked on the 1992 Clinton campaign. The campaign reached a \$37,500 settlement with the woman, paid for with campaign money, under a confidential agreement under which no wrongdoing was admitted. The campaign eventually had to refund the government \$9,675, the share of the settlement that had been provided by taxpayers under the matching funds that partially finance presidential campaigns during the primaries. At least in that case nobody talked about "specific expertise."

There is a dreadful message in all this. It is that certain people, no matter how foolish or wrong their actions, will not only be rescued after repeatedly embarrassing the president but actually get rewarded for doing so—and, in the process, have a chance to embarrass the president all over again. It makes no moral or political sense.

	No.	
TOTAL	This Period	\$156C41.15
Total	Unitemized Unitemized + Itemized	\$0.55

- Page from 1st Qtr FEC report 1993 of Clinton's GELAC Committee.
- Payment of \$25,000 to Watkins Group is shown -- last item dated 3/9/93
- Watkins Group does not have telephone

  mumber in Little Rock; Watkins Group—
  IS David WAtkins who was working at
  White House at that time.



### **BELOW THE BELTWAY**

### If you release it, they'll print it

It was hardly worth the ink but the Des Moines Register published a liberal reform group's breathless discovery that freshman Iowa Republican Rep. Gary Ganske's voting record coincided with the interests of corporations whose PACs contributed to his campaign.

BTB supposes that, in the perfect world envisioned by the Iowa Citizen Action Network, candidates such as Ganske would be permitted to raise campaign funds only from their political enemies.

### Zeliff's loan was illegal "technicality"

Rep. Bill Zeliff (R-N.H.) has agreed to pay a \$30,000 fine to settle a Federal Election Commission case involving a loan by Christmas Farm Inn Inc. to his 1990 campaign.

Zeliff argued the \$209,000 loan was legal because he owned the corporation and he was therefore providing personal funds to his campaign. The FEC said it is illegal under laws dating back to 1907 for corporations to make contributions or expenditures in federal elections.

"I borrowed my own money and just got caught up in the technicalities of the FEC," Zeliff told *The Associated* Press.

It was a costly technicality. Besides the \$30,000 fine, Zeliff acknowledged that he'd spent another \$60,000 in personal and campaign funds fighting charges that his campaign violated the Federal Election Campaign Act.

### He keeps on collecting

Remember David Watkins, the longtime friend of President Clinton's who was kicked out of his White House job last summer after commandeering a Marine helicopter for a \$13,679 jaunt from Camp David to a nearby golf course?

Watkins landed a corporate communications job with Callaway Golf Co., maker of the popular Big Bertha clubs. He was also quietly put back on the Clinton payroll with \$3,000 monthly payments totalling at least \$30,000 last year from Clinton's campaign committee to Watkins' dormant consulting firm in Little Rock.

Committee lawyer Lynn Utrecht told Business Week that Watkins was paid to prepare affidavits and help frame responses to the Federal Election Commission's audit of Clinton's campaign. One item the FEC refused was a \$37,500 payment by Clinton's campaign to settle a sexual harrassment charge that was brought against Watkins by a female accountant.

### Singing a new tune

Throughout most of its two decades of operation, the Federal Election Commission has been persistently criticized by Common Cause. So BTB was surprised (but not for long) to see the FEC described as "the overworked and much maligned agency" in a recent edition of Common Cause's own magazine.

### Banking on Kerry

Community development and affordable housing groups in Massachusetts wanted Sen. John Kerry (D-Mass.) to support their call for Federal Reserve Board hearings on the proposed merger between Fleet Financial Group Inc. and Shawmut National Corp.

They were chagrined to learn last month that Kerry, who strikes of "good government" pose by refusing to solicit PACs for campaign contributions, allowed the chief executives from the two banks to co-host a fundraising event for his 1996 re-election campaign.

### Tackson suiting up

Jesse Jackson is gearing up for a potential third presidential campaign, either as a challenger to Bill Clinton for the Democratic party's nomination or as a possible independent, The Associated Press reports.

He's been trying to wipe out the nearly \$150,000 debt left from his 1988 candidacy. He's also been telling supporters that running as an independent is a good news/bad news proposition. The bad news is that it would practically destroy Clinton's chances to win election to a second term; the good news is that it would draw black voters who will help Democrats recapture the House. It's a theory.

### Recycled rhetoric

There's a joke about Cajun Louisiana, held by some to be a place with great food and a colorful history of political corruption, making a deal with Scandinavian Minnesota, held by some others as a place despoiled by dull food and good government.

"Come down here and govern, we'll go up there and cook," went the punchline.

Now it may be time to revise the story following reports that a campaign tract used in last year's Maryland gubernatorial race has been recycled, word for word, for a campaign tract being used in Louisiana Treasurer Mary Landrieu's current gubernatorial campaign.

"Random rampant violence has families across our state fearing for their safety in the streets, in the schools, even in their own cars and homes," Maryland Gov. Parris Glendening said last year and Landrieu is repeating this year.

Both campaign tracts were written by Kim Haddow of Greer Margolis Mitchell Burns & Associates where a spokesman for the political consulting firm told The New Orleans Times-Picayune: "The problems in Maryland are equally applicable in Louisiana."

# Anderson Report on the

### FEC Audit of the 1992 Clinton for President Committee

July 1998

**Volume Four of Five** 

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POC Had Excellent Reputation in the Campaign Services Community

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Other CPC Audit Anomalies

### **Anderson Report - Tab 19**

19001-19004: Memo which shows intent to manipulate matching funds illegally.

19005-19020: Transcript of FEC Open Meeting which shows CPC's poor management.

Doc 19001-4/A shows that the CPC planned strategic expenditures on items that would benefit the general election campaign of Clinton and Gore, by using the primary contributions combined with federal matching funds.

Doc 19005-20/B is the open meeting discussion about a cash log that the CPC maintained in Little Rock. This "petty cash" log was established with some \$180,000 in traveler's checks that were not very well tracked. The CPC could not account for \$20,000 plus \$40,000 in expenditures that exceeded the daily allowance for draws from the petty cash fund. The FEC resolution of this matter was reasonably objective. But the situation demonstrates exceedingly poor controls and lack of management on the part of individuals in Little Rock.



#### MEMORANDUM

TO:

' Mickey Kantor

Eli Segal Mark Gearan Bruce Lindsey David Wilhelm David Watkins

FROM:

David Ifshin Philip Friedman

DATE:

March 23, 1992

RE:

Convention and General Election Planning

Last October, we stressed the importance of the changes in the timing of the federal matching fund payments and late revisions to the regulations on bank loans as potentially decisive in having available cash to contest battleground primaries. The finalization of that loan was impaired unnecessarily by the campaign's late start and a tendency of too many hands trying to grab the wheel at the last minute. There are even more significant issues and new developments that will affect whether millions of dollars will be available or usable in the general election. We need to begin now to address these issues as an integral part of our convention and general election planning.

To assess the impact of the various regulations and provide strategic planning for the transition from the primary to general election, we have assembled an experienced committee of volunteer attorneys to provide assistance to the Campaign. These attorneys include:

Ken Gross: Partner at Skadden, Arps, and former Chief of Enforcement at the Federal Election Commission.

Lyn Utrecht: Partner at Manatt, Phelps, former General Counsel to the Harkin Presidential Campaign and Deputy General Counsel to the 1984 Mondale for President Committee.

Joe Sandler: Partner, Arent, Fox, General Counsel to the Association of State Democratic Chairs.

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Christine Varney: Partner, Hogan & Hartson, former General Counsel to the Democratic National Committee.

This committee of volunteer attorneys represents virtually all of the experienced available talent in the campaign finance area and will assist the General Counsel in advising the Campaign on the following matters:

### I. Wind-up of Clinton for President Committee, Inc.

The Clinton for President Committee, Inc. is entitled to spend \$27.2 million during the primary period. An additional \$5.524 million is available for exempt fundraising expenses. While private contributions will likely comprise the bulk of the Committee's assets, the Committee is entitled to receive a maximum of \$13.81 million in primary matching funds.

Within 15 days after receiving the nomination, the Committee must file a statement of net outstanding campaign obligations ("NOCO"). A NOCO statement is a statement of the amount of obligations for qualified campaign expenses less cash and other assets of the Committee. If the Committee is in a deficit position on the date of the nomination, the Committee may continue to raise private contributions and receive matching payments for matchable contributions. Conversely, if the Committee is in a surplus position, it will not be entitled to any further matching fund payments.

As the NOCO requirements indicate, there is a distinct benefit to the Committee incurring primary election obligations right up to the nomination. While primary funds may not be used for the general election, strategic purchases of equipment, media, polling and other items during the primary period can—without using the limited general election funds—benefit the campaign in the General. Thus, with the nomination in hand, the Committee may make extensive media buys in key states where primaries have not yet been held (i.e. CA, NJ, NY, OH, etc.) to make voters familiar with Clinton and his message.

The campaign's direct expenses for the convention in July must be paid for out of this account. (See Section V below).

### II. General Election Financing

The Democratic nominee is entitled to a public funding entitlement of \$55.24 million. This entitlement also constitutes the expenditure limit of the presidential campaign in the general election. After the appropriate agreements and certifications are submitted to and approved by the Commission, this entitlement will be available to the General Campaign approximately four to five days after the nomination.

In accepting this entitlement, the General Campaign is prohibited from accepting private contributions except for the

General Campaign's legal and accounting compliance fund. The General Campaign is also prohibited from using any excess primary funds for general election expenses.

### III. Coordinated Party Expenditures

In addition to the \$55.24 million that may be spent by the presidential campaign in the general election, there are additional funds available from the Democratic National Committee ("DNC"). The DNC is entitled to spend \$10.33 million in coordinated party expenditures during the general election. This money is commonly referred to as 441a(d) money. Coordinated party expenditures are 1) separate from the general election expenditure limits; 2) made in consultation with the campaign; and 3) paid directly and reported by the DNC.

Individuals may make contributions of no more than \$20,000 each to the national party committees (i.e. national, house and senate campaign committees) to finance the 441a(d) expenditures. No individual, however, may give more than \$25,000 in aggregate federal contributions in a calendar year.

PACs may give contributions to the national party committees to finance the 441a(d) expenditures of no more than \$15,000 each to the national committee, House campaign committee, and the Senate campaign committee.

### IV. Legal and Accounting Compliance Fund

The presidential campaign is permitted to raise private contributions for a legal and accounting compliance fund. Individuals, even those who "maxed out" in the primary, may contribute \$1,000 to such fund. Funds for such an account may be raised prior to the nomination.

In 1988 this fund was approximately \$6 million. Excess funds from the Committee's primary accounts may be transferred to the fund. The fund may be used for the following.

- 1) to pay all amounts, including salaries, incurred by the campaign for legal and accounting services to ensure compliance with the Act.
- 2) to defray that portion of overhead, payroll, computer services, etc. that are related to compliance.
- 3) to defray any civil or criminal penalties
- 4) to make repayments

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5 to defray unreimbursed Secret Service transportation costs

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6) to make a bridge loan to the General Campaign prior to the receipt of federal funds.

### V. State Party Activity on Behalf of Presidential Campaigns

In order to encourage grass roots party activity, the law permits political party committees to engage in "generic" party building activities that provide benefits to the presidential campaign. These activities may be paid for with state party funds and do not count against the presidential campaign's expenditure limit. It is these funds which have been disparagingly characterized as "soft money" that may make the difference between victory and defeat in a close election since they are usable for programs designed to increase targeted voter turnout.

While certain restrictions are associated with some of the activities, they include the following:

- Voter registration and get out the vote;
- 2. Volunteer campaign materials (buttons, bumper stickers, handbills, brochures, yard signs, etc.);
- 3. Slate card distribution.

The rules governing these funds have been changed dramatically by the FEC following a law suit by Common Cause. The new regulations alter the permissible allocation of funds between federal and non-federal sources. The consequence is that the \$50 million or so calculated for the general through the state parties may be of far less value. Moreover, these new allocation rules have forced many state parties into a position where their federal accounts are in increasing debt. Comprehensive planning in this area needs to begin immediately in a manner that is integrated into our general election planning and coordination with the DNC.

### VI. Convention Related-Expenses

In July 1991, the Democratic National Committee received for its nominating convention committee \$10.6 million in federal funds. In 1992 this amount will be increased by an additional entitlement of \$448,000 as an adjustment for inflation. Specific regulations govern expenditures at the Convention and contributions that may be received to defray convention expenses. It is imperative that all convention planning take into account these limitations and restrictions on the use of federal funds. As noted in Section I, the campaign's own expenses must be paid out of our primary campaign account.

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### PEDERAL ELECTION COMMITTEE

OPEN MEETING

Thursday, December 15, 1994

Transcribed From Provided Tapes By:

CASET Associates, Ltd. 10201 Lee Highway, Suite 160 Fairfax, VA 22030 (703) 352-0091

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### PARTICIPANTS:

Democratic Commissioners:

Scott Thomas

Danny McDonald, Vice Chairman John McGarry

Republican Commissioners:

Trevor Potter, Chairman

Joan Aikens Lee Ann Elliott

Staff:

Lawrence Noble, General Counsel

Joe Stoltz Bob Costa

#### PROCEEDINGS

Agenda Item: Report of the Audit Division on the Clinton for President Committee, Monqualified Campaign Expenses - Traveleyis Charles

COM. POTTER: We have two more items in this section and let's see if we can move. The first one is traveler's checks. Russ, what do we need to know about this one?

RUSS: The committee used about \$180,000 worth of traveler's checks. We're saying there is not sufficient documentation, since canceled checks or drafts weren't used. In response the Committee is saying they provide us a log that documented the use of the checks, and these should be viewed the same as petty cash-type expenditures. The checks themselves went to pay the people that travels per diem, which was subject to a \$30 a day limit.

The only problem we had with the log, it only totaled \$159,000, so we were \$20,000 short. There was about \$40,000 in expenditures of that \$159,000 where the people receiving the traveler's checks, the amount far exceeded what they would have needed to cover their own per diem. So we asked for additional information on those traveler's checks in the interim audit report.

As far as the problems, the \$20,000 shortfall in the log, and the \$40,000, the Committee, did not respond to

that in the interim audit report. So we are recommending right now the repayment of the entire \$179,000.

COM. POTTER: If I could just clarify that figure. Of the \$179,000, which is the total \$179,357 of traveler's checks, \$40,000 is not explained in the log, and \$20,000 is not in the log, so that's a total of \$60,000, is that right?

RUSS: The exact amount -- that's close, yes.

COM. POTTER: Okay, the round figure is approximately \$60,000, is either not in the log or is in the log, but not explained. I understand though that you are also recommending that the \$129,000 not be a qualified expense. Can you explain that portion? I get the \$60,000. I need to hear more about the \$120,000.

MR. STOLTZ: The question that arises here is whether or not these disbursements are made by a check drawn on the Committee depository, which is one of the requirements. Alternatively, could this be considered a petty cash fund, because we have rules on petty cash funds that say that a disbursement up to \$200 can be made out of the petty cash fund, as long as a log is kept.

So in our opinion, the traveler's checks are not checks drawn on a Committee account. They are American Express traveler's checks. The canceled instruments go back to American Express, and neither we nor the Committee, as best I know, have access to them.

Of course one of the reasons that the requirement for a check drawn on a committee depository is there is to create the paper trail of where the money went. In this case, you don't have it. Because of that, we didn't feel that these would meet the documentation requirements that are laid out in 9033.11, which require a canceled check, except for petty cash funds.

COM. POTTER: You went through why it's not a depository. Why is it not a petty cash fund?

MR. STOLTZ: Petty cash funds, at least as I understand them, usually don't run \$180,000, and are used to pay per diem. Those are generally considered miscellaneous office expenses, that sort of thing. I can't recall a case where we have had a \$180,000 that was considered petty cash.

COM. POTTER: Just looking at it from the Committee's standpoint for a moment, is there anything here in our regulations that would tell them they couldn't have treated it that way?

MR. STOLTZ: Other than --

COM. POTTER: You say up to \$200. Were any of these over \$200? Do we know?

MR. STOLTZ: I don't know what the denominations were, but I'm sure there are varying denominations. Of course the Committee's argument is that since per diem is \$30 a day, then every day should be considered a \$30

disbursement, even if there were a number of days paid off at one time. The log may show amounts greater than \$200 to one person on a given day.

COM. POTTER: Does it?

RUSS: Yes, it does.

COM. POTTER: Com. Elliott?

COM. ELLIOTT: Just a question. On Attachment 9, when it says the check number, that check number is the Committee check to the Worthen National Bank to purchase traveler's checks in the amount shown?

RUSS: That is correct.

COM. ELLIOTT: Okay, thank you.

COM. POTTER: One final question. I note in the Committee response it says that after consultation with the FEC, the Committee began a policy of distributing traveler's checks. Do we know anything about what that refers to?

MR. STOLTZ: The Committee has nothing specific on it, and neither do we on our side. The Committee contends that they checked with us, and were assured that it was okay. We have no documentation or recollection of that conversation. The Committee hasn't been able to find anything contemporaneous on it either. Beyond that, I can't offer much information.

COM. POTTER: I understand you have no recollection of the conversation. Has this issue come up

before? Do you have a view as to whether you clearly would have said, oh, no, you can't do that, or whether --

costa: I think that's exactly right; I think we would say no. I think given the volume of activity, this is not in any way, shape or form a petty cash fund. You are talking about \$180,000. And also, the requirement that disbursements be made by check drawn against your depository is clearly there to document the disbursement.

So we would take the position that no, you can't do that. That would be my view of that, and I would be willing to bet that's what we would come back with.

Especially on a unique question like this, I am positive there would have been some written record of that. We would have been in consultation with counsel just to make sure that they were on board on that, but we have no recollection of ever being asked at all.

COM. POTTER: Joe?

MR. STOLTZ: There was a later conversation before this, or after this thing started, with one of the attorneys for the Committee where the advice was given back that we thought it was cash. But that occurred well after this program started, and is not the conversation the Committee would be referring to in their response.

COM. POTTER: I'm sorry, I missed the advice that was given.

MR. STOLTZ: That it would be considered cash.

COM. POTTER: Com. Thomas?

com. Thomas: Thank you. The one basis that I can see for dealing with the amount over \$60,000 as nonqualified is if we have an indication that treating that as cash disbursements out of petty cash, we were dealing with situations were they were expenditures in excess of \$100 to any person per purchase or transaction, which is the standard note of the petty cash reg.

I had the impression based on what was said earlier there are some of these transactions that amount to expenditures to some persons that exceed \$100 per person per purchase or transaction. How much of that remaining amount are we talking, that \$120,000 roughly are we talking falls into that kind of category?

MR. STOLTZ: I think we would have to go back through the log and try to add it up. It is a handwritten log that has been photocopied a couple of times, so we haven't gone through and done that calculation.

com. Thomas: It just strikes me that we can't sort of -- I have it all different possible ways. It seems that I tend to agree that for purposes of using these kinds of instruments to make expenditures, that the closest analogy is to treat them as part of petty cash. If that is the arrangement, then the reason that you would say that

they would be impermissible would be because on a per purchase or transaction basis they were giving out more than \$100.

RUSS: Excluding the \$40,000 that we requested the additional documentation on, if you are talking about the remaining, when you subtract out the \$20,000 that we can't account for at all, and the \$40,000 where we need additional documentation, what is left, I think the log pretty much supports that the person received the \$30 per day per diem. So if you want to count one day a transaction, they would be under the \$100.

COM. POTTER: If somebody asked for 20 days per diem and received \$2,100 -- that's not right. Whatever amount they received, \$600 in cash, that wouldn't be permissible payment?

MR. STOLTZ: That's correct. Generally, that's what they would do if the person was expected to be gone for four days, they might give him \$120 or \$150 for five days.

COM. THOMAS: Does that violate the petty cash rule though if it is more than \$100?

MR. STOLTZ: How do you want to read a transaction? Is it \$30 a day, or is \$150 for five days out?

COM. POTTER: How do we normally read the petty cash rule?

MR. STOLTZ: Of course when they are doing it,

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generally petty cash disbursements, if you give the person \$150 for something, it is \$150 cash disbursement.

COM. THOMAS: And it's over \$100.

MR. STOLTZ: It's over \$100.

COM. THOMAS: I have always wondered how the petty cash rule really should be applied, because I envision someone saying, okay, I can't give out \$100 per transaction. Here is a \$100, walk out my door, come back and I'll give you another \$100 for the next day. We'll go out my door, walk back and I'll give you another \$100 for the day after tomorrow, and so on and so forth.

COM. MC DONALD: Or is it five transactions for five days?

COM. THOMAS: That would seem to me to be sort of side stepping, but on the other hand, where the underlying basis for the payment reflects that it corresponds to a per diem for one day, and then another per diem for the next day and so on, it seems kind of odd to make them come back on each separate day to get their petty cash outlay. It could be a per diem payment. It could be for the daily doughnuts. It could be the daily pizza run.

COM. POTTER: Com. Elliott?

COM. ELLIOTT: Does the log show, let's say a person was getting \$30 a day for five days, so it would be \$150. Does the log show whether they got one particular

cashier's/traveler's check, or whether they got multiple checks, each of them being under \$100? Does the log show?

MR. STOLTZ: The entry on the top of this particular page shows starting date 2/15, ending date 2/19. Total number of days, five. Going to Orlando. Then it gives serial number ranges for --

COM. BLLIOTT: The checks?

MR. STOLTZ: The particular checks.

COM. ELLIOTT: So you can tell by that whether they got one or more?

MR. STOLTZ: That is correct. It shows a total amount of \$150.

COM. ELLIOTT: In the one that you are looking at, are there enough checks there to be under \$100 each?

MR. STOLTZ: There is a series of \$20 checks, and a series of \$10 checks. These are traveler's checks, which usually come in relatively small denominations.

COM. ELLIOTT: So presumably none of them are over -- I mean per traveler's check, none of them are over \$100.

MR. STOLTZ: The same would be true if you gave it out in tens and twenties.

COM. ELLIOTT: That's true too. I understand that. It would be the same as cash if that is our presumption, but I just wanted to know whether you could walk in and out the door, or whether you got it all in one

little --

COM. POTTER: Bob Costa?

MR. COSTA: I would just warn the commission to be very leery, very careful about what you do in this area. You are talking about \$180,000 disbursed, and there is no record of that disbursement other than a log, and that log is what it is; it's a log. There is some indication that the traveler's checks were issued, but there is no tie back. You can't get a canceled check that went to a particular payee that says I gave John McGarry \$150 on this date. There is no record of that at all. I would be very, very leery of this.

COM. POTTER: I think I am concerned with that.

It's not this particular series of transactions or this log

-- it is, but I think the general theory is that you have

\$180,000 in what is essentially cash that can be handed out.

That's why you have the petty cash rule and the \$100 per

transaction limit is so that you don't have a lot of cash

going out without good documentation. It is the equivalent

of cash to have \$150 or \$300 or whatever being handed out in

this. I don't think it is what we want to encourage.

COM. THOMAS: I agree. It strikes me that unless we think they are in essence fibbing to us that this was for per diem, I think we do have a pretty good picture; the same kind of picture you get with a petty cash log. With a petty

cash log, all you have is a log sitting there that shows that some hard cash was used for the following reasons.

It strikes me that we have about the same level of documentation here as we have in a petty cash situation. I grant you that the dollar amount overall is larger than apparently we see in most petty cash arrangements, but I. would be interested, have the other presidential campaigns we have seen over the years not had doled out say \$180,000 worth through a petty cash fund?

MR. STOLTZ: None come to mind that deal in that kind of volume. I think that there are a number of reasons why a lot of campaigns don't want to do that. It requires keeping a lot of cash around. If you are going to make those kind of expenditures out there, then you have a security problem with the cash, and your records aren't necessarily very good on it. So I think most campaigns wouldn't want to do it.

This traveler's check program is a little different, but security of those is a difficult issue too. If they are blank, they are as easy to use as tens and twenties. So I don't think we have seen anything quite this dimension before. Petty cash -- the word "petty" seems to indicate insignificant, and \$180,000 didn't strike us that way.

COM. POTTER: Com. Thomas, I was going to say in

that exchange that I would be willing to give them the benefit of the rule, and say to the extent that any of these transactions were below \$100, meaning on the log where it shows the total amount paid in one sum, if it says below \$100, then I think they could use this as a petty cash fund.

The fact that they made greater use of this than other campaigns is not something that is apparent on the face of our rules, so I don't have a problem. But I think the rule is a balance, a compromise between saying we recognize campaigns are going to have to make some smaller expenditures in cash, and our record keeping requirements for the use of public money, if we are talking about large sums.

So having struck that balance at \$100, I am reluctant to say it's like a petty cash fund, but if it is \$150 or \$250, thus over the limit for the petty cash, they can still do it. It seems to me that's -- I don't see any reason to go beyond what the petty cash rule would allow.

COM. THOMAS: I guess the only issue is how do you calculate that \$100 per transaction?

COM. POTTER: I calculate it the way they apparently do on their summary sheet, which is you look over to the right and see a total. If it is \$150, it is over, and if it is \$60 or \$90, it is under.

19918 COM. THOMAS: So how does the sheet work again,

Joe? Maybe I'm not understanding.

MR. STOLTZ: It lists the number of days and the serial numbers of the individual traveler's checks that were passed out. Then there is a total amount, which would be the sum of the values of the traveler's checks that are issued to that person, presumably at that time.

COM. POTTER: So per individual, number hand over.

MR. STOLTZ: On this on they got about five 20s and five 10s, so it was \$150.

COM. POTTER: There is a column that shows \$150 or shows \$60 or whatever.

Bob, did you want to --?

COM. THOMAS: Does any new calculation have to be made based on that rule?

MR. STOLTZ: Based on that rule, we will need to go back through and run some tapes to come up with a figure.

COM. THOMAS: Sorry guys. Would you like a motion? Would that help, Commissioners?

MR. STOLTZ: I think we better clean it up. It's not terribly difficult to do. It will take us half an hour or so to do it.

COM. POTTER: Bob?

MR. COSTA: The question is concerning the amounts not on the log as well. Would the motion include --

COM. THOMAS: Those undocumented.

MR. COSTA: Okay, that's fine.

COM. POTTER: The \$40,000 that is not explained, I would consider undocumented. We're talking the \$120,000 that we have been discussing, I think.

COM. THOMAS: So, Mr. Chairman, I move that as to the traveler's check section of the audit report, that we have the audit division recalculate the amounts based on whether or not on a per transaction basis, the amount paid out exceeded the allowable petty cash amount.

COM. POTTER: Do you have that motion, Madame Secretary?

SECRETARY: Yes.

COM. POTTER: Is that clear, audit division?

MR. STOLTZ: Yes.

COM. POTTER: Based on that discussion. Those in favor of the motion say aye. Those opposed?

[The motion was unanimously approved.]

Madame Secretary, the motion passes by a vote of six to zero.

It having reached the witching hour, and Com. Elliott having left us, as we had agreed she would do at noon, let us adjourn until 1:30 p.m., and we will come back and hope we can proceed through the rest of this.

[Whereupon the meeting was recessed for lunch at 12:00 p.m., to reconvene at 1:30 p.m.]

# Anderson Report - Tab 20

20001-20014: Documents showing POC Had Excellent Reputation

# **Documents:**

20001-3/A	FEC Press Release (Pat Anderson for Clinton and Stan Huckaby for Bush)
20004/B	POC ranks twelth among top 100 vendors in 1990
20005&6/C	Senator Gore's staff reevaluated POC and decided to stay
20007-11/E	ISIS Group consultants recommended Gore stay with POC
20012/F	Senator Simon's staff recommended POC's reliability
20013&14/G	Senator Simon's staff again recommended POC

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Political Machine III:

## Accounting For All Those Political Dollars

Byline: Fred Bayles Associated Press, 08/03/92

WASHINGTON (AP) - In a warren of partitions and desks, young men and women in dress-for-success garb sit quietly by their computers: recording, quantifying, analyzing.

They are accountants, plying their button-down trade for President Bush's re-election campaign, keeping meticulous tabs on the tidal surge of dollars flowing in and out by the millions.

It is within this nexus that contributions and expenses are sorted

out under complex federal rules.

Forty-nine people work to keep it all straight for the Bush-Quayle campaign committee, including five full-time lawyers and four computer specialists. Millions of dollars pour in; millions go out, check by check, for expenses large and small, from \$106.63 to Jack's Famous Deli to feed hungry staff to \$25,403 to Kabco Productions for printing.

"Structurally, it is very important to a campaign," says Stan Huckaby, treasurer for Eush-Quayle. "You can't expect people in various parts of the campaign to be accountants. It can be a real

headache."

But the importance of the work done by Huckaby's helpers - a / well-scrubbed group of mostly recent college graduates ~ doesn't necessarily buy Huckaby instant prestice. Eyes tend to glaze over when he tells strangers what he does.
"My wife and I still laugh about it. After 13 years she still has

a difficult time explaining what I do, " he said.

While the title of campaign accountant doesn't carry the same cachet as more visible campaign posts, the work is essential. A cynical public and a wary election commission require books be kept in balance even in the frenzy of a constantly changing campaign. Democrat Bill Clinton's campaign, for example, took in \$4.7 million in June and spent \$4.1 million - and every penny of it must be accounted for. Indeed, the campaign faithfully reported, item by item, that it had spent exactly \$4,149,796.73 in June.

The need for detailed accounting has spawned a number of private firms that specialize in helping campaigns negotiate the mine fields

of campaign laws.

"It's a huge amount of management where experience clearly counts," said Pat Anderson, president of Public Office Corp., a Washington-based firm helping the Clinton campaign and several Senate candidates comply with FEC regulations.

All presidential campaigns have accounting departments, but none are as large or professional as the Bush-Quayle operation. The Clinton campaign has 15 people assigned to track the money.

Huckaby is a leader in the field. He ran finances for Bush-Quayle in 1988 and heads an Alexandria, Va., firm handling the books for 20 different House and Senate races this season.

Eleven years ago Huckaby was a CPA in Columbia, Tenn., when two congressional candidates asked for help complying with new federal election laws.

Huckaby took the job, discovering quickly it wasn't another

accounting assignment.

"It was a disaster," he recalled. "There was no organized methodical way that the law was put together. It was very complicated."

He eventually sorted it out, developing systems and computer programs to ease the way through paperwork and regulations. He has been in Washington ever since.

"Originally my interest in it was mostly accounting, but it

quickly became more politics," Huckaby said.

Not all campaign financial officers come from the accountants ranks. David Watkins, director of operations for the Clinton campaign, had an advertising company before he was tapped to watch the campaign's checkbook.

"Given my druthers I'd probably not do this again," he said. "The

job can be crazy."

Crazy, in part, because of the pace that money is received and spent. At the time of Paul Tsongas' New Hampshire victory, mail bags of contributions had to be stacked in corners to await processing; the Clinton campaign spent \$4.5 million in the two weeks before Super Tuesday.

The task is enormous: Eush spent \$26 million during the primary

campaign and Clinton \$28 million.

"It was pretty difficult to keep track of it all," Watkins said.

But track it the campaigns must. The Federal Election Commission requires meticulous documentation of where the money comes from and coes to.

The campaigns follow the rules, motivated by the carrot of federal matching funds and the stick of fines and possible prosecutions.

"It's actually two jobs, the normal bookkeeping you would do for a company plus all the requirements for reporting that are not generated by normal bookkeeping," Huckaby said.

Consider the work required for each check donated to a campaign.
To chalify for federal matching funds, each donation must be

To qualify for federal matching funds, each donation must be checked against a list with tens of thousands of names to make sure the donor hasn't exceeded the \$1,000 limit. The check is assigned a code number and photocopied twice. Documentation is included about the donor's address, profession and employer.

All this, says Huckaby, is checked at least three times before the paperwork is loaded into boxes once a month and trucked over to the FEC office. There, inspectors take random samples, looking for

errors.

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A donation can be rejected for matching funds if it is not legible, if it is on a corporate check, if it is out of alphabetical or numerical sequence.

"Fifty or 60 things can be done wrong," Huckaby said.
Mistakes are costly. If the FEC finds 10 out of 100 checks it
examines are in error, the campaign will be denied 10 percent of its
matching funds request. With requests in the millions, each
percentage point carries significant pain.

Huckaby said the Bush campaign hovers around a 1 percent error rate. Anderson claimed a slightly better performance for the Clinton campaign. The smaller, more harried Tsongas campaign had error rates of 4 percent to 5 percent.

Tracking expenses is an even trickier job.

There are FEC rules on how to present the voluminous lists of accounts; there are FEC regulations about proper expense items (no parking tickets, no Chivas Regal on room service tabs). And those expenses run the gamut: from office supplies to consulting fees to payroll.

Just keeping track of bills piled up by scores of campaign

operatives spending at a hectic pace can be daunting.

Huckaby's corporate-style operation includes deputy directors, assistant deputy directors and regional desks that keep a close eye on spending for other parts of the campaign.

"Rather than try to force people to be accountants and watch their budget, we sit down with them every two or three days and go over

things with them," he said.

The Clinton campaign uses a similar system, but ultimately it is

Watkins who gives the final approval.

"I sat in all the planning meetings and was often the one who said this is all we can do," he said. "I thought I was usually pretty positive about things, but they started calling me 'Mr. Gloom," he said.

Other campaigns don't run as smooth. David Goldman tried to track expenses for the Tsongas campaign through regional desks. But with fewer people it was organized chaos.

"At times it was overwhelming to keep track of all the details. Feople would go out and start creating their own campaigns and charter their own jets," he said.

To Huckaby, the jcb, with its headaches and egos, is not for just

any accountant.

"You can't just do this because it is an interesting accounting or financial job," he said. "You have to believe in the candidate you do it for. A nice aside is that you're able to make a living at it as well."

20003 A-2

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# CAMPAIGN 100



# PROFILE 100

#### JIM MARSINIZ

Greer, Margolis & Mitchell Washington, D.C. Media Democrat

## MUMBER OF EMPLOYEES

#### HOMETOWIC

Kalamazoo, Mi

#### EDUCATION

B.A. from Oberlin in Government and Communications. "It didn't seem very relevant at the time."

#### CLIENT LIST:

Douglas Wilder (VA) Andrew Young (GA) Howard Wolpe (MI) Wyche Fowler (GA) Brock Adams (WA) Greenpeace **United Auto Workers** Kodak

#### FAVORITE CAMPAIGN IN 1890:

Kathleen Brown. Treasurer California

#### HOURS PER WEEK:

"Oh God! The last three months of a campaign are absolutely solid."

#### PAST POSITIONS:

Deputy Communications Director Mondale/Ferraro, AA for Rep. Wolpe, Campaign Manager - Wolpe.

#### ON WORKING WITH FRAME GREEK

"I was rejuctant about the partnership at first. Campaign work makes you a little shortsighted, but it's been terrifically exciting doing what you believe in and watching the firm grow and expand."

#### WASHINGTON HANSOUTE

Says wistfully, "I wish."

# This month CIN features the U.S. Congressional Election 100

S.A.				
	RANK	YEAR-END	VENDOR	FIELD
i.		TOTAL		
	Market Harden	- 17 (4 4 4 7) [38] Held 1 (2 10 10 10 10 10 10 10 10 10 10 10 10 10	•	
1	1.	1,253,371	USPS	POSTAGE
	2.	1,120,719	COYLE MCCONNEL & O'BRIEN .	DIRECT MAIL
1	3.	503,413	KARL ROVE & CO.	DIRECT MAIL DIRECT MAIL
-	4.	414,315	AB DATA	FULL SERVICE
1	5.	411,840	CAMPAIGN MANAGEMENT	RECEPTION
	6.	379,818	WALDORF ASTORIA	MAILING
- ]	7.	348,473	PM CONSULTING EPPSTEIN GROUP	MEDIA
	8.	348,133	MAMAIS & ASSOC.	DIRECT MAIL
-1	9.	335,547 330,777	PERKINS GROUP	MEDIA
1	10. 11.	309,392	ADVERTISING CONSULTANTS	ADVERTISING
1	12.	305,022	PUBLIC OFFICE CORP.	DIRECT MAIL
-	13.	278,190	HARRY STEPHENS SVCS.	CATERING
- }	14.	277,652	COMPUTER OPERATIONS	DIRECT MAIL
1	15.	243,033	SAS TELEMARKETING	TELEMARKETING
	16.	223,840	IRS	TAXES
1	17.	215,375	KEMPER O'DELL AND ASSOC.	ADVERTISING
1	18.	186,084	ROBERT GOODMAN AGENCY	MEDIA
	19.	179,534	RNC	FUNDRAISING
	20.	178,052	USA DIRECT	MAILING EXPENSE
	21.	174,514	FOSTER & ASSOC.	DIRECT MAIL
1	22.	161,153	SAM PATE ASSOC.	PRINTING
ĺ	23.	159,421	AILES COMMUNICATIONS	MEDIA
1	24.	145,915	DISCOUNT PAPER BROKERS	PRINTING
-	25.	144,640	PETER HART RESEARCH	POLLING
1	26.	133,380	PARRIS FOR CONGRESS 90	TRANSFER
	27.	130,064	MELLMAN & LAZARUS	POLLING
]	28.	129,990	CAMPAIGNS & ELECTIONS	MAILING EXPENSES
ļ	29.	121,069	SOVRAN BANK	INTEREST
	30.	116,655	DAVIS CATERING	CATERING
- 1	31.	113,625	SOUTHWEST PUBLISHING	POSTAGE/PRINTING
	32.	113,246	AMEX	TRAVEL CAMPAIGN RESEARCH
	33.	111,010	JOE PERITZ ASSOC.	CONSULTANT
- 1	34.	110,170	GARY LAWRENCE & ASSOC.	DESIGN
	35.	110,104	CRANFORD, JOHNSON RESPONSE DYNAMICS	POSTAGE
į	36. 37.	108,972 106,265	B. KLEIN & ASSOC.	FUNDRAISER
	37. 38.	106,265	O'DELL,ROPER & ASSOC.	POSTAGE
ı	30. 39.	102,676	OMNI HOTEL	RECEPTION
- 1	40.	102,232	STEVE GORDON & ASSOC.	FUNDRAISER
- [	41.	101,986	MYERS ASSOC INC.	TELEMARKETING
	42.	98,746	BRIGHT BANC SAVINGS	TAXES
ĺ	43.	98.583	HICKMAN - MASLIN	POLLING
[	44.	96.886	US WEST COMMUNICATIONS	PHONE
	45.	92,483	JOHN FRANZEN MULTIMEDIA	MEDIA
1	46.	91,350	MARKET OFINION RESEARCH	POLLING
	47.	E9,131	PEM MANAGEMENT CORP	ADVERTISING
	48.	87,792	HILTON -	RECEPTION
-	49.	84,301	BANKER'S TRUST	TAXES
	50.	82,705	SOUIRE-ESKEW	MEDIA
		Ť	l	L

### The Campaign 100 reflects the disbursements made by the top 100 congressional campaigns.

Putting together the Campaign 100, like qualifying for the list itself, is a long-term project. 7 formation is compiled from the disbursements listed in the financial disclosure reports, filed by candidate, at the FEC. This issue includes all disbursements, of \$1,000 or more, made to cc tions from January to December, 1989 by the top 100 congressional campaigns only. Cam; had to show at least \$100,000 worth of disbursements in the year-end report. Campaign s are not eligible for the Campaign 100, however CIN does include campaign salary data for s cal analysis. Special congressional election information was not used. The Campaign 100 pared under the direction of CIN analyst John Machita. The profiles that appear staff writers.

October 3, 1991

Pat Anderson Public Office Corporation 911 2nd St., NE Washington, DC 20002

Dear Pat:

It was good to speak with you. We look forward to seeing you on Thursday, October 10th at 11:00.

Now that Senator Gore's political intentions for 1992 are clear, Winston, Liza and I are very interested, on behalf of "Friends of Al Gore," in moving forward with our database clean-up and upgrade program.

We have had numerous meetings with you to determine the most efficient and cost effective way to achieve this end. While you and I have agreed to proceed with the de-duping project, we have not made a decision about other aspects of your proposal to clean-up and upgrade to Session 5. In fact, we do not know how we will be billed for the de-duping project, absent a commitment on our part to undertake the complete upgrade proposal.

The difficulty we have had with the proposal is the cost of \$12,000 or more for cleaning-up and upgrading the now remaining 63,000# records. As I mentioned to you, we have sought the advice of a computer consultant, Thom Kennon, with The ISIS Group, to help us better understand the pricing of donor-base information systems.

He has had experience with many vendors in the industry. We have also met with numerous other vendors since last November and this past June and compiled comparative service and pricing packages which we shared with Thom Kennon. In consultation with us and working with all the materials prepared by POC and the various other vendors with whom we have met, he prepared a "review and recommendation for a Friends of Al Gore's donor base information system," which he will forward to you early next week.

We found his recommendations constructive, particularly sections that pertain to cost analysis of system enhancement and up-grading. We are interested in reviewing his analysis with you

20005



(202) 543-5930

Pat Anderson October 3, 1991 page 2

with him present. During our 1 1/2 hour meeting next week we would like you to provide us with separate cost break downs for:

- 1) Clean-up
- 2) Upgrading to Session 5

This should be a brief meeting to resolve this issue only. Once we pass this hurdle, we can focus on larger data-base issues at a later date.

Clearly, you have been very responsive in providing us with pricing information pertaining to production and day-to-day system management. We are now interested in thoroughly understanding the pricing of your system enhancement and up-grade costs.

We agree with Kennon's assessment that it is in our best interest to stay with POC, but we would like to move forward in a way that again is most effective and cost-efficient. We do appreciate all the time and effort you have put into this, but hope you understand the challenge we face in trying to make a recommendation to Senator Gore and his key advisors about proceeding with this project.

Thank you for your patience and perseverance. On behalf of Liza and Winston, we look forward to meeting with you and resolving this issue so that we can continue to enjoy an exceptional working relationship with you and Bill and your very capable staff for years to come.

Sincerely,

pébra Fried Levin

918 F Street, N.W., Suite 608 Washington, D.C. 20004 (202) 347-6071

To:

Debra Fried Levin

Friends of Al Gore

From:

Thom Kennon

ISIS

Date: 10/7/91 (REVISED)

Re: Review & Recommendations - Donor Base Information Systems After an extensive review of your files and documentation and several meetings with you and your staff, we offer the following recommendations for how best to proceed with firming up the foundations of the information systems supporting the Friends of Al Gore's donor management programs.

The goal is to implement these recommendations working closely with the current service bureau supplier, Public Office Corporation (POC). We feel that after all parties have had a chance to review this document, a meeting with POC, Gore and ISIS analysts can be called. From this meeting should follow the path toward an even better computer support environment for the Friends of Al Gore's file.

#### I. Historical Perspective

To acquaint ourselves with Gore's past and current donor systems, and to get a feel for the Gore / POC working relationship, we reviewed several pounds of meaningful notes, memo traffic, reports, listings, user guides, proposals, product literature, etc. in order to In these pages can be found the kernel of our following recommendations. That is, it seems that any unmet needs or nagging problems are likely caused by more by poor communications rather than structural or qualitative inadequacies with the POC system.

Our review of the various proposals received from other service bureaus leads us to recommend that the file should most likely remain where it is. This conclusion is reached not so much by favorable cost comparison but by less tangible benefits to be reaped by remaining with POC.

Our experience in the industry tells us that there are few computer service suppliers with the experience and savvy of POC

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in regard to matching funds and other FEC reporting techniques and requirements. After a detailed review of their pricing structure, user documentation and memos/proposals, we offer the following comments ---

- o Most prices are in line with industry standards. Two areas, though, seem somewhat high --- the costs associated with generating laser letters (\$.35) and envelopes (\$.20), and the cost for data entry (upwards of \$.50 each for most direct mail standard records).\*
- o The user documentation we reviewed was somewhat dated. The more recent documentation on SES5 looks very promising but the volume we had is more geared to a marketing rather than a user application.
- o Among the many listings and report we reviewed, we didn't identify any basic statistical analysis reports, e.g. direct mail returns stats by segment or list code. The powerful report writer offered by SES5 will most likely accommodate these needs. In fact, your staff should aggressively pursue training exposure to the new report writer as soon as possible.

A good stat report includes columns for --- the segment name and code, total pieces mailed, number of responses, total gifts, average gift, percent response, cost per thousand and net per thousand.

o In general, we recommend that Gore upgrade to SES5 as soon as possible, in conjunction with cleaning and deduping the master file.

\*The piece rates noted here were taken from a general cost sheet included in some of the POC material we reviewed. Their price to Gore may already be less.

# II. Master File Cleanup and Version Upgrade

The thrust of the current effort should be driven by the hunger for creating a lean and profitable donor (and communications) data base. All solutions - both short and long term - must meet and pass the test of cost-effectiveness.

Towards these ends, we recommend the following step be initiated immediately ---

o A possible dupe listing should be generated and reviewed by senior staff at Friends of Al Gore. This report is standard throughout the industry. It selects and groups records which contain enough similarity in their last name, first name, and ZIP fields to be considered possible duplicates. The report is reviewed and processed and all necessary master file maintenance is performed.

The costs associated with performing this task should breakdown into three easily quantifiable groups ---

- o production output (generating possible dupe galley)
- o file maintenance hours (both reviewing galleys and affecting changes/deletions to the master file)
- o programming costs for writing and running the spin-off procedures.

You can expect costs for the first area to be on a per thousand basis (most service bureaus charge for records passed, selected and sorted).

Costs for file maintenance can be controlled by having your in-house staff do the majority if not all of the review and updating.

Most service bureaus will have in place the necessary routines to run a possible dupe listing. In the event POC doesn't already have a routine in their program library, such a program shouldn't entail more than 4 or 5 hours of programming. The costs for writing and running custom routines varies from service bureau to service bureau, but generally run about \$50 - \$60 per hour

### III. Upgrading to POC's SES5 Release

Much of the advance info we read about the SES5 upgrade seems very exciting. System application software such as POC's goes through many invaluable iterations as they respond to customer needs, feedback and requests for enhancements.

The main areas which Gore stands to benefit from by moving up to the new software release are ---

- more advanced report writing utilities
- o more advanced donor management techniques and utilities (e.g. householding records, dynamic dupe identification)
- o access to more complete, relevant and up-to-date user documentation
- o access to more relevant and targeted user training & support for Gore staff

In most cases, service bureaus make these sorts of system application upgrades available in a 'transparent' way to the

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client, as regards additional costs for conversion and such. Thus, we're unclear as to the costs POC notes for upgrading your current donor file to their new system version.

We can see, however, that there might be some additional costs associated with training users on the new version, and recommend that reasonable upgrade fees associated with retraining be paid to POC.

## IV. Nuts & Bolts System Specifics

We recommend that the concrete steps taken to fortify the Gore donor management program include a specific review of your needs in the following areas ---

o Day-to-day operations ... It should be determined how much of the daily processing tasks (cashiering, data entry, acknowledgment production, output selection and generation, etc) will be performed by inhouse vs. POC staff.

Considerable savings might be realized by taking on more of the data entry and laser output work inhouse. But you don't want to get bogged down constantly retraining volunteers, interns or temporary staff. Thus, SES5's inherent ease of use and clear user documentation are two very important factors when considering taking on more inhouse processing duties.

o Standard Outputs ... POC should assist Gore with creating a stable of standard outputs, relevant to Gore's ongoing program and information needs. These should include a weekly stat report by segment/list code; counts by donor code; batch reconciliation reports, etc.

In addition, the procedures for selecting and grouping output segments by giving history variables (highest gift, date of last gift, etc.) and the capability of assigning them unique segment/source codes should be institutionalized.

- o Review PAC data files ... Obviously, all clean-up efforts for the main donor files should include similar treatment of the PAC data files. We're unclear how this donor base has been used in the past, so specific recommendations unique to its use cannot be made at this time.
- O Hi-dollar fundraising track ... Undoubtedly, the future of direct response fundraising for candidates is in soliciting hi-dollar donors. This means more personalized, laser, three-way match outputs and such. It also means employing more sophisticated techniques when segmenting, testing, and analyzing the donor file and response rates.

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- o Valid Code Table ... Once the table of valid codes is trimmed and re-estalished, let's investigate POC's ability to provide two handy data entry features ---
  - --- pop-up 'help' display of codes and descriptions
  - --- entry level validation, where only valid codes may be entered. (This feature most likely already exists.)
- o Training, Documentation, Help Screens :.. One of the premier areas of concern is that everyone from senior staff to interns and volunteers have access to up-to-date user documentation. As mentioned above, system knowledge and facility must become institutionalized to prevent the all-too-prevalent scenario of one person being the inhouse specialist ... and when they leave, no one else has the foggiest idea of how to process.

Additionally, having 'hotline' access to analysts at POC or even on-line help screens within the application will go a long way to increasing the level of user sophistication necessary to decrease ongoing costs accrued through wasted time, rerunning outputs, low integrity data updating to the system etc.

o Information tools ... Gore's ability to raise money and communicate with the individuals on the data base turns on the quality of the tools at their disposal. It appears that POC has the solution for 90 percent of their current needs and desires. Let's look to demonstrate the power and accessibility of the data by taking a look at the ways in which POC can offer it in its most potent from --- as usable information. (See, also, above under "Standard Outputs".)

This means providing easy and informed access to ---

- stat reports with custom range selection
- upgrade/downgrade reports
- conversion of selected info from the master file into a spreadsheet or data base environment for PC "massaging".

We hope the above can serve to initiate a process that will lead to a cost-effective solution to your current needs. We'd welcome the opportunity to meet with you and discuss the above in conjunction with presenting it to POC for discussion and implementation.

cc: Pat Anderson, POC,

2001

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### MEMORANDUM

DATE:

April 23, 1987

TO:

FF

FROM:

ART AND KATHY

RE:

COMPUTER SYSTEM

Floyd, time is running out and we have to make a decision on what we're going to do in this area. We strongly recommend that we stay with POC and use option 2 to start with for the following obvious reasons.

POC is a known quantity. We know that they are reliable; they have never failed us. They know us and our working relationship has always been comfortable and productive.

We think we should let them do the tracking of contributions and expenditures at the fee of \$3.00 per check. This includes entering the record, checking for dupe, checking for "maxed out", checking for maximizing matching funds, computer-driven deposit report, generation of thank you letter, sign and mail, and prepare related FEC reports as required, including matching funds.

We have to think in the long-term and the post-1988 Senate era, if there is one, as we will be responsible for it. It makes no sense to get into the data conversion and programming business. This always proves to be an expensive nightmare. We know this from our experience with the 1984 campaign files. We also know how expensive it was to "clean up" this file, in terms of returned contributions, legal fees and computer charges.

We also have to think about the Christmas cards. After two years, we now have a system down pat, where we know exactly what we're doing and what has to be done. We think it makes no sense at all to change our mode of operation at this point. Dealing with this many cards is hard enough, without making it any harder on ourselves.

If this data going into an unknown system is not controlled from the beginning of entry, we're setting ourselves up for failure. We have to look at the post-1988 files and the 1990 election. At that time, there will be no time to spare with conversion of this file again.

Chris Dunn (from an FEC and legal standpoint), Bob and Skip agree with us that this is the best approach. Bob told me that the one place not to skimp is with maintenance of our data records.

We think the reasons stated above are obvious and compelling ones for retaining POC.

2001



## MEMORANDUM

DATE:

August 27, 1987

TO:

PAUL SIMON

cc: Brian Lunde

FROM:

ART GRELES

RE:

CAMPAIGN COMPUTER SITUATION

Paul, as you know, there has been a great deal of confusion and several problems with the computer situation at the campaign. We are now in a situation that is pretty much out of control. The reason is that there is no centralization of our datafiles.

On April 23, I was asked to put forth a recommendation on what we should do in this area for the campaign. I did. (See the attached memo.) I thought this was the best and most trouble-free system. I still strongly believe that. However, for reasons which I still do not agree, my recommendation was not taken. As it turned out, all of my fears have been proven and have come to reality. We must now do everything we can to extricate ourselves from this difficult position.

Presently, CDSI is recording all contribution information and producing our FEC reports. Because of the fact that they have done a less than adequate job of producing thank you letters, and the fact that the information was inaccurate, we decided to have Public Office Corporation (POC) read tapes from CDSI to run the thank you letters. Their quality is far superior.

The central difficulty still remains. We are now faced with the reality that there is no central place for the records. It has been proposed to run a bi-weekly tape from CDSI and "merge-purge" it for duplicates and updating at POC. As I pointed out on April 23, this will prove to be an expensive nightmare. We ought to have a system in place where the entire history of the contributor is in one place and should be available to be seen at once. Because we have seen that CDSI duplicate records still remain, we can never be sure that the conversion program would catch all of these errors.

It was charged that POC "botched up" the 1984 Glenn campaign. This is not true. In fact, the Glenn campaign, under POC's management had the highest percentage of FEC matchable funds in 1984. Even with the huge debt that was left in that campaign, Public Office Corp. was paid in full. POC did not do the expenditures, where the Glenn campaign did have trouble.

We've been doing business with POC for the last two and one half years. They successfully converted all of our 1984 campaign records into a system that is now useable and has

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integrity. POC is a known quantity; their record for accuracy is second to none.

There is also the question of the Christmas cards. POC managed our Christmas card project last year and came through without a hitch. We finally have this aspect of our organization under control and it makes no sense to tamper with it now. If, in fact, the file is not merged, and is not stored in a central location, we will have countless duplicates. I know how you feel about that and we just should not let that happen. It won't, if we establish a policy that makes sense.

We are also asking POC to develop a program to computerize the delegate selection and tracking process. It makes infinitely more sense to have these files stored with the same vendor — this will minimize the possibility of duplicates.

We have to be prepared on all fronts. If it turns out that you will face reelection in 1990, the job will be made much more difficult if we have the kind of mess that we inherited from the 1984 campaign. It took us two years to clean up that file at a cost in excess of \$100,000 because it was never maintained properly or with adequate supervision. This figure does not even include the FEC legal fees which resulted from overmaxed contributors. Our present course leads us to the impossible situation of dealing with a datafile that is CONSTANTLY UNDER CONSTRUCTION. From a data processing standpoint, this makes no sense at all. We should make sure that kind of scenario will not happen again.

There is the cuestion of cost, of course. Based on the July 21 invoice from CDSI, we came up with a charge of \$3.07 per item. (See attachment for breakdown). CDSI's entire method for calculating charges includes correcting their own mistakes. We know that POC will charge a flat \$3.00 per item -- LESS than what CDSI is charging us for this work. This will include maintaining all the contribution information -- from the entry of the contribution to the production of the thank you letter to the production of the FEC report. (See attachment). POC has now offered to give us a flat 20% discount on all material and labor.

While the accounting department has some concerns about the conversion, our "big picture" outlook for you, in my opinion, outweigh them. Whenever you deal with conversions, it is asking for trouble. Unnecessary trouble is something you nor this campaign need. I've been in this business for 13 years and see nothing but trouble down the pike unless we take action now. Paul, I strongly feel that the way this has been going does not serve you well. You deserve the best and it my mission to see to it that you get it.

# Anderson Report - Tab 21

21001-21087: Legal and other "Opinions" that show the 1992 audit was controversial

Documents:	
21001-17/A	Opinion of FEC General Counsel Lawrence Noble on auditors' findings re CPC - Note bottom page 158, FEC GC stated that the CPC "contends that the redesignations were performed by mistake by a former vendor."
21018-21031/E	Opinion of Lawrence Noble re auditors findings for Clinton/Gore '92
21032-39/C	Republican Commissioners: Statement of Reasons for their audit vote
21040-60/D	FEC general counsel's opinion re MUR 4192  - Note on page 16, reason to believe Clinton Primary Committee submitted inaccurate financial statements to FEC in violation of 11 CFR 104.14(d) and 9034.5(a)  - Note on page 18, reason to believe Clinton Primary Committee transferred primary assets to Compliance fund while CPC still had debts, in violation of 11 CFR 9003.3(a)(1)
21061&62/E	Republican Commissioners: Statement of Reasons for their MUR 4192 vote
21063/F	Political commentator re President Clinton's 1992 campaign
21064-66/G 21067&68 21069&70 21071&72 21073 21074&75	Political commentator: Looting the Treasury Political commentator: Arbitrary & Capricious Political commentator: FEC audit basis for complaint Political commentator: FEC Dems run interference for Clinton Political commentator: Clinton [1996] campaign disclosure falls short Political commentator: FEC's failure to demand \$1.4 million
21076&77/AA	Democratic Commissioners: Statement of Reasons for their audit vote
21073-87/BB	Democratic Commissioners: Statement of Reasons for their MUR 4192 vote

Received in Person



# FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 3, 1994 192
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Election
Meno.

### HEMORANDUN

TO:

Robert J. Costa

Assistant Staff Director

Audit Division

THROUGH:

John C. Sufi

Staff Directd

FROM:

Lawrence M. Noble

General Counse

Kim Bright-Coleman W Associate General Counsel

Lorenzo Holloway

Assistant General Counsel

Peter G. Blumberg

Attorney

Abel Montez

Attorney

Andre Pineda A by Pub

Attorney

Proposed Final Audit Report on Clinton for President

Committee (LRA #449/AR #94-17)

#### I. INTRODUCTION

SUBJECT:

The Office of General Counsel has reviewed the proposed Final Audit Report on the Clinton for President Committee ("the Primary Committee") submitted to this Office on August 26, 1994. The following memorandum summarizes our comments on the proposed Report. We concur with findings in the proposed Final Audit Report which are not discussed separately in the following

21001

21 1. Doc A

Final Audit Report Clinton for Preside Committee (LRA \$449/AR \$94-17) Page 2

memorandum.1/ If you have any questions concerning our comments, please contact Peter G. Blumberg, the lead attorney assigned to this audit.

#### II. ITEMIZATION OF REFUNDS AND REBATES (II.D.)

The proposed report raises the issue of whether the Primary Committee is required to itemize refunds and rebates made by various entities to its travel agent, Worldwide Travel, Inc. ("Worldwide"). The Primary Committee argues that it was not required to do so, and cites Advisory Opinion ("AO") 1983-25 as support for its position. The proposed report, however, concludes that AO 1983-25 is not relevant, and further states that AO 1983-25 cannot be extended to non-media vendors.

ໄປກໍ່ເຂັດ 1983-25, the Commission found that a committee may report its payments to media consultants as expenditures, and that payments by media consultants to other persons, which are then used to purchase services or products used in connection with the consultants' contract, need not be separately reported. The 'Commission noted the following factors as significant in making this determination: (1) the consultants had a legal existence that was separate and distinct from the committee's "operations; (2) the consultants' principals did not hold any committee at aff positions; (3) the committee was conducting arms-length negotiations with the consultants that resulted in a formal contract; (4) the consultants were not required to devote their "full efforts" to the contract with the Committee, and the consultants expected to have other media contracts with other committees and business entities during the campaign period; and (5) the committee had no interest in the consultants' other contracts.

'We disagree with the proposed report's conclusion that AO 1983-25 is not relevant to itemizations made by Worldwide, and cannot be extended to non-media vendors. To the contrary, we believe that AO 1983-25 is relevant to determine whether the Primary Committee is required to report refunds and rebates for travel expenditures. AO 1983-25 contains no language limiting its scope solely to media vendors, and AO 1983-25 factors have been applied by the Commission to determine the legitimacy of a non-media business vendor. See AO 1994-25. As such, we believe that AO 1983-25 allows the Primary Committee, subject to the above-stated factors, to contract with non-media vendors to perform campaign activities without requiring the Primary Committee to itemize and report vendor payments from third-party sources.

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<sup>1/</sup> We recommend that the Commission consider this document in open session since the discussion is not exempt from disclosure under the Commission's Sunshine Regulations. 11 C.F.R. § 2.4. Parenthetical references are to the placement of the findings in the proposed report.

Final Audit Report Clinton for President Committee (LRA \$449/AR \$94-17) Page 3

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Notwithstanding the applicability of AO 1983-25 to the Primary Committee, we note that the Primary Committee response states that it satisfied the reporting obligations of AO 1983-25 without including supporting documentation. We believe, however, that if such documentation is provided, the Primary Committee may be able to satisfy the above-stated factors.

### III. EXTENSIONS OF CREDIT BY COMMERCIAL VENDORS (II.F.)2/

The proposed report addresses the Primary Committee's payments totaling \$296,355 to 14 individuals, organizations, and corporations. Some of these payments appear to be contributions under 11 C.P.R. § 100.7(a)(1).3/ The issue is whether the Primary Committee has demonstrated that the transactions followed the dictates of 11 C.F.R. \$\$ 116.3 or 114.9, and, therefore, are exempt from the "contribution" definition. 11 C.F.R. § 100.7(a)(1). Due to the type of transaction, some of the expenses fall within the ambit of 11 C.F.R. \$ 116.3, while others fall under 11 C.F.R. § 114.9. Pursuant to 11 C.F.R. § 116.3, an incorporated and unincorporated commercial vendor may extend credit to a political committee and the credit will not be considered a contribution if it is provided in the ordinary course of business. However, the focus of 11 C.F.R. § 114.9 is on the use of corporate and labor facilities in connection with a Federal election and whether a reimbursement is made within a commercially reasonable time for the normal and usual rental charge.

We concur with the report's analysis of the transaction involving Tradec because the services provided appear to qualify as exempt volunteer services pursuant to 11 C.F.R. § 100.7(b)(3). We conclude that the transaction involving Occidental Petroleum should be analyzed under 114.9 because a corporate executive used the corporation's facilities for individual volunteer activities in connection with a Federal election. We believe that the transactions involving Mozark Productions, Walter Kyle, Newmark and Company Real Estate, Inc.,

<sup>2/</sup> We suggest that you change this heading in your report to "Contributions, Extensions of Credit by Commercial Vendors, and Use of Corporate Facilities," because this section involves all three areas.

<sup>3/</sup> We recommend that you revise your report in the Manatt Phelps discussion on page 18 by removing any references about the \$90 bill because it is of no legal significance.

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The Sutherland Company, Sun Building Associates, 4/ and TAC Air should be analyzed under section 116.3 because these entities are "commercial vendors" that provided goods and services. See 11 C.F.R. §§ 116.3(a)-(b) and 116.1(c).5/

However, we believe that the Primary Committee has failed to prove that it complied with section 116.3(c) or 114.9. affidavits provided by the individuals, organizations and corporations insufficiently address whether the dictates of the Commission's regulations were followed. In many cases, the affidavits explain in general terms that the vendors followed their established procedures and past practice in approving the extension of credit. Nevertheless, the vendors have not provided the underlying documents to support their claims. e.g., Primary Committee Response, Exhibit 7. In other affidavits, the vendors state that their terms with the Primary Committee were substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation, but failed to give specific examples of those debtors, as recommended in the interim report. See, e.g., Primary Committee Response, Exhibit 15.6/ In other affidavits,

<sup>4/</sup> We recommend that you revise your report in the Sun Building Associates discussion on page 28 by changing the words "requirement(s)" to "consideration(s)" in accordance with the language of 11 C.F.R. § 116.3(c).

Democratic Party of Arkansas, Goldman Sachs and Company, Hellring Lindeman Goldstein and Siegal, Manatt, Phelps, Phillips & Kantor, and O'Keefe Ashenden Lyons & Ward cannot be analyzed under section 116.3. These entities do not appear to be "commercial vendors" because the services that they provided are not the sort of services that they provided in their "usual and normal business." 11 C.F.R. § 116.1(c). These transactions cannot be analyzed under section 114.9, because these entities are not "corporations" or "labor organizations." See 11 C.F.R. § 114.9. The American Pederation of Teacher's transaction cannot be analyzed under section 114.9, because the use of the labor organization's facility is not involved.

In contrast, the proposed Final Audit Report for Clinton/Gore '92 General Election Committee (the "General Committee") identifies an apparent prohibited contribution from Chambers Associates. In response to the Interim Audit Report, the General Committee submitted a detailed affidavit from Chambers Associates that names other clients with the same billing arrangement as the General Committee. In addition, the vendor provided copies of its balance sheets and accounts receivable schedules to document the information contained in the affidavit. The proposed Final Audit Report states that the General Committee has demonstrated that this

Pinal Audit Report
Clinton for Preside Committee
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Page 5

the vendors state that they followed usual and normal practice in the vendors' trade or industry by billing at the end of the project. However, the vendors fail to provide the underlying documents to support these claims or the names of other customers. See, e.g., Primary Committee Response, Exhibit 16. However, we note that some of the credit extensions involve relatively small amounts of money and the period of credit extension is not particularly long, so we believe that the Audit Division could recommend no further action in those situations.

#### IV. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES (III.B.3.)

The proposed report recommends that the Commission make an initial determination that the Primary Committee repay \$106,453 to the United States Treasury for nonqualified campaign expenses. These expenses include disbursements for legal and professional work, employee bonuses, duplicate payments to various vendors, lost equipment and traveler's checks.7/

We concur with the Audit Division's conclusion that \$37,500 paid to Kathlyn Graves Escrow Agent was not a qualified campaign expense. The Primary Committee submitted a canceled check with the notation "settlement." Given that the word "settlement" did not disclose the "purpose" of the disbursement as defined by 11 C.F.R. \$ 9033.11(b)(3), the Audit Division recommended that the Primary Committee provide more documentation. The Primary Committee then provided a letter from the Committee's general counsel, who stated that "the payment was made pursuant to a consulting arrangement with a former employee of the Committee, and the related agreement is subject to a confidentiality provision." The Primary Committee requests that the letter not be subject to pubic disclosure under the Freedom of Information Act. If the letter is subject to disclosure, the Primary Committee requests that the letter be returned.

<sup>(</sup>Footnote 6 continued from previous page) billing did not constitute an extension of credit.

We also generally concur with the report's conclusions that uncollected duplicate payments are not qualified campaign expenses. However, we recommend that you place all the uncollectible duplicate payments on the Primary Committee's Statement of Net Outstanding Campaign Obligations ("NOCO Statement") as an accounts receivable. This will ensure that any efforts made by the Committee to collect the duplicate portion of the payment will be consistent with the efforts deemed sufficient to conclude that the duplicate payment expenses are qualified campaign expenses. Compare 11 C.F.R. § 9034.5(d) (documentation requirements relating to collectibility of accounts receivable) with 11 C.F.R. § 9033.11 (documentation requirements relating to proving disbursements are qualified campaign expenses).

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Clinton for President Committee
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In the cover memorandum, you ask whether the Commission will be able to honor the attorney's request to keep his letter from public disclosure. You also ask whether the letter may be referred to in the Final Audit Report. This Office believes that because of the Freedom of Information Act's strong presumption in favor of disclosure, 8/ the Commission would be required to disclose the letter if It were in our possession as part of the Final Audit Report. Although parties to a "settlement" can agree to keep matters "confidential," information used as a basis for audit findings may be subject to disclosure. See 11 C.F.R. § 9038.1(e).9/ We believe that the Primary Committee's initial decision to enter into such a settlement agreement placed a legal impediment on its burden of proving that the disbursement was a qualified campaign expense. See 11 C.F.R. \$5 9033.1(b)(1)-(2). Thus, the Primary Committee may not be able to demonstrate that a "settlement" is a "purchase" of "goods or services." 11 C.F.R. § 9033.11(b)(3)(ii). The letter is and the underlying documentation are essential to determine whether the expenditure was a qualified campaign expense. 10/ If the Primary Committee persists in its claim that this transaction constitutes a qualified campaign expense, the audit and repayment process require that the expense be verified and disclosed as such. C.F.R. \$ 9038.1(e)(1). If the letter cannot be used in the audit process, the Primary Committee will be required to make a pro rata repayment for the expenditure.11/ In accordance with

<sup>8/</sup> See generally United States Dept. of State v. Ray, 502 U.S. 164, (1991)(Court states: "[The] burden remains with the agency when it seeks to justify the redaction of identifying information in a particular document as well as when it seeks to withhold an entire document.").

<sup>9/</sup> See generally Bacon v. Secretary of Air Force, 785 F. Supp. 1255 (S.D. Ohio 1991) (settlement terms for a retaliatory discharge suit can be kept confidential if the parties agree to do so), aff'd 7 F.3d 232 (6th Cir. 1993).

<sup>10/</sup> The FOIA section 552(b)(7)(C) exemption cited by the attorney is clearly inapplicable because his letter was generated in an administrative, rather than in a law enforcement, context. See 5 U.S.C. § 552(b)(7)(C). Because we do not possess the actual settlement agreement, we are unable to determine for ourselves whether the "privacy" exemptions of 5 U.S.C. § 552(b)(6), also cited by the attorney, would be applicable to the agreement and to the attorney's letter. See generally United States Dept. of State v. Washington Post Co., 456 U.S. 595 (1982).

<sup>11/</sup> Although the Primary Committee may choose to make the pro rata repayment for the expenditure, this does not abrogate its obligation to "furnish to the Commission all documentation relating to disbursements and receipts ... " 11 C.F.R. § 9033.1.

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these conclusions we recommend that you (1) return the letter to the Committee's counsel and return any copies, and (2) remove from your report all specific references to the agreement's substance.12/

The proposed report also addresses \$237,750 paid by the Primary Committee in employee bonuses. The Audit Division has concluded that the Primary Committee has provided sufficient documentation on a \$87,500 bonus to Carville and Begala, because this payment was paid subject to an employment contract. However, the Audit Division treats the remaining bonuses, totaling \$156,250, as nonqualified campaign expenses. We concurwith the Audit Division's conclusions with regard to all the bonuses, except for the payment to Amy Zisook.

Amy Zisook's \$25,000 payment is included in an employment agreement between the Primary Committee and Amy Ziscok & Associates, Inc. In an affidavit, Zisook states that she submitted an unsigned written agreement to the Primary Committee in February 1992. Zisook, who provided the auditors with a copy of the agreement, states that it accurately reflected her verbal agreement with the Primary Committee regarding payment of professional fees including the \$25,000 bonus payment.13/ Because the Primary Committee paid her the professional fees in accordance with the written agreement, an employment contract appears to have existed between the two parties. Although the Audit Division and Ms. Zisook characterize the \$25,000 payment as a "bonus," the contract suggests that the payment was part of her professional fee for services rendered. Therefore, we believe the Amy Zisook payment should be treated as a qualified campaign expense. Thus, we recommend that you revise your report in accordance with this conclusion.

Finally, the proposed report concludes that the Primary Committee has not demonstrated that the payments for lost and stolen equipment are qualified campaign expenses. This equipment includes a stolen fax machine valued at \$1,207 and

<sup>12/</sup> We also recommend that you revise the heading for this issue to read "Kathlyn Graves Escrow Payment" because an "attorney-client privilege" issue is not involved here.

<sup>13/</sup> The fact that Zisook's agreement is unsigned is not determinative of whether an obligation existed. See generally Landmark Properties, Inc. v. Architects
International-Chicago, 172 Ill. App. 3d 379, 382 (1988) (party named in a contract may, by her acts and conduct, indicate her assent to its terms and becomes bound by its provisions even though she has not signed it).

Pinal Audit Report Clinton for Preside Committee (LRA \$449/AR \$94-17) Page 8

lost radios valued at \$13,424.14/ The Primary Committee contends that it was not commercially feasible to have purchased insurance to cover such losses. Moreover, the Primary Committee contends that due to the prohibitive cost of such commercial insurance, its only alternative was self-insurance.

A committee's decision to purchase or not purchase commercial insurance is a relevant factor in determining whether a committee made a "good faith" effort to safeguard its equipment. See Memorandum to Robert J. Costa, Re: Committee on Arrangements for the 1992 Republican National Convention --Legal Comments on Proposed Interim Audit Report (September 17, 1993), at 4-7.15/ Although a committee's purchase of commercial insurance provides some evidence that it has taken steps to safequard its equipment, the documentation provided by the Primary Committee to demonstrate that commercial insurance was cost prohibitive refers not to the Primary Committee, but to the General Committee. See Primary Committee Response, Exhibit 33 (Marsh & McLennan Memorandums dated June 22, 1994). The Primary Committee asserts that it had verbal policies which were promulgated and adhered to during the primary campaign to safequard its equipment. The Primary Committee, however, provides no documentation to support this assertion other than the General Committee's "Loss Prevention Policy," which it claims resulted from these verbal policies. Additionally, the Primary Committee provided no documentation demonstrating what efforts it made to locate the lost and stolen equipment, nor did it provide documentation demonstrating that no fraud or abuse occurred. See Memorandum to Robert J. Costa, Re: Committee on Arrangements for the 1992 Republican National Convention --Legal Comments on Proposed Interim Audit Report (September 17, 1993), at 4-7. Therefore, the Primary Committee should be required to make a pro rata repayment to the United States Treasury for the value of the lost and stolen equipment.

# V. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES -- GENERAL ELECTION EXPENDITURES (III.B.2.)

The proposed report finds that the Primary Committee made various expenditures for goods and services that were for the benefit of the General Committee or the Clinton/Gore '92 General

<sup>14/</sup> We note that the lost equipment itself is similar to the Tost equipment at issue in the audit of the Committee on Arrangements for the 1992 Republican National Convention where the Commission determined that the loss was a permissible use of funds. See 11 C.F.R. § 9008.6(a).

<sup>15/</sup> The Interim Audit Report for the Committee on Arrangements for the 1992 Republican National Convention was interpreting permissible uses for convention expenditures. Compare 11 C.F.R. \$ 9008.6(a) (permissible use of convention expenses) with 11 C.F.R. \$ 9032.9(a) (qualified campaign expenses).

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Election Compliance Fund ("the GELAC"). The report notes that the Primary Committee incurred costs for items such as computers and polling in the last weeks prior to the candidate's date of ineligibility ("DOI") when most or all state primary elections had been held.16/ The report reasons that the purchase of certain goods and services made so late in the primary campaign could have no other purpose than to be pre-expenditure report period expenses for the general election committees. Since the costs were not incurred in connection with seeking the nomination, the report recommends that the Commission make an initial determination that the Primary Committee repay the Treasury \$237,948.17/

The Primary Committee urges the application of essentially a "bright line" test based on the date of a candidate's nomination to support its position that the expenses in question were qualified campaign expenses for the primary election. The Primary Committee argues that costs for goods and services incurred before DOI and used before DOI are qualified campaign expenses. With regard to the expenditures for equipment and facilities (e.g., mainframe computers, personal computers, printers, keyboards, monitors, modems, software), the Primary Committee argues that the expenditures were qualified campaign expenses for the primary election because the goods were purchased and used before the DOI. Thus, the Primary Committee contends that as a primary asset, it was permitted to sell the equipment to the General Committee at a 40% depreciation, the required price pursuant to 11 C.F.R. § 9034.5.

With regard to the polling expenditures, the Primary Committee argues that the expenditures were qualified campaign expenses because the polls were conducted prior to the DOI and concerned issues related to the seeking of the nomination. In addition, the Primary Committee contends that the polls had a limited shelf life which had expired by the time the general election campaign began. The Primary Committee asserts that the Commission has acknowledged the limited shelf life of polls in its own regulations. See 11 C.F.R. § 106.4(g).

<sup>16/</sup> State primary elections were held through June 9, 1992. The candidate's DOI was July 15, 1992.

<sup>17/</sup> The report concludes that the expenditures are qualified campaign expenditures for the General Committee, and rather than require the Primary Committee repay the United States Treasury, the General Committee can also choose to reimburse the Primary Committee for the expenditures the General Committee should have made. However, the expenditures that should have been made by the General Committee will place the General Committee in excess of its expenditure limitation by \$684,220 if the General Committee makes the reimbursement, as noted in the proposed Final Audit Report for the General Committee.

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Committee would enable a primary committee to use private contributions and public matching funds to pay a portion of the general election campaign expenses, thus circumventing the general election expenditure limitation and the law's prohibition on receipt of private contributions by publicly funded general election candidates. 2 U.S.C. § 441a(b)(1)(B); 26 U.S.C. § 9003(b)(1) and (2). Moreover, such an interpretation is inconsistent with 11 C.F.R. § 9003.4(a)(1), which permits general election campaigns to incur expenses prior to the beginning of the expenditure report period. This regulation would not be necessary if all expenditures made prior to the primary date of ineligibility were qualified campaign expenses of the primary committee, even if the expenditures related to the general election.

However, our analysis differs from that of the Audit Division because we believe that some of the expenditures may have had a dual purpose for the Primary Committee and the General Committee, and those expenditures could be allocated between the two committees if the purpose is documented. The central issue raised is whether the expenditures were made "in connection ... with [the primary] campaign for nomination" or "incurred to further a candidate's [general] campaign for election to the Office of President... " Compare 11 C.F.R. § 9032.9(a)(2) (defining qualified campaign expenses for primary committees) with 11 C.F.R. § 9002.11(a)(1) (defining qualified campaign expenses for general committees).

A "bright line" test based solely on the date that an expenditure is incurred has never been applied by the Commission to determine whether a particular expense is a qualified campaign expense for the primary or general election. Rather, the two key elements for assessing qualified campaign expenses are timing and the subject matter requirement of "made in connection with" or "incurred to further." 11 C.F.R. \$\$ 9032.9(a)(2) and 9002.11(a)(1). It is not sufficient merely for an expenditure to be incurred prior to the candidate's date of ineligibility to be considered a qualified campaign expenditure. Rather, the correct standard for determining whether an expenditure is a qualified campaign expense relies on both the timing of the expenditure and the nature of the expenditure. See AO 1984-15.

The Commission has previously considered the purposes of expenditures when allocating costs between primary and general presidential committees. In the Reagan Bush '84 audit, the Commission concluded that certain specific expenditures for polling, consulting, and voter registration incurred prior to the candidate's DOI and apparently related to the general election campaign could be considered qualified campaign expenses of the primary committee since the purpose of the expenditures related to "delegate tracking." Final Audit Report on Reagan Bush '84 Primary (July 7, 1986). However, the

Pinal Audit Report Clinton for Presiden Committee (LRA #449/AR #94-17) Page 11

Reagan Bush general committee also reimbursed the primary committee \$64,000 for telemarketing expenditures incurred prior to the candidate's date of ineligibility, and the Commission allocated costs between the committees for advertising production costs incurred during the primary campaign for certain advertisements used during both the primary and general campaigns, thus demonstrating that the timing of the expenditure alone does not determine whether it is related to the primary or general election. Id.; Statement of Reasons supporting Final Repayment Determination in Reagan-Bush '84 General, at 9-12 (July 11, 1988). This precedent supports examining all of the particular facts surrounding an expenditure.

Moreover, matters concerning coordinated party expenditures, which involve publicly-financed presidential campaigns and expenditure limitations, are analogous to the issue of qualified campaign expenses presented here. In situations involving coordinated party expenditures, the Commission has considered not only the timing, but also the purpose of expenditures when determining to which election an expenditure should be attributed. AO 1984-15. For example, in AO 1984-15, the Commission noted that while "timing is relevant," coordinated party expenditures are not restricted to the time period between the nomination and the general election. and it would be inconsistent with the purpose of the limitation on coordinated expenditures to "permit expenditures made prior to nomination but with the purpose and effect of influencing the outcome of the presidential general election to escape this limitation. AO 1984-15.

It is possible that some of the expenditures at issue were intended, in part, for activities related to securing the candidate's nomination. With regard to capital assets determined to be primary committee assets, we believe the Commission would have to allocate those expenditures pursuant to the method used for depreciating capital assets under 11 C.F.R. \$ 9034.5(c)(1). For the purpose of calculating a committee's NOCO Statement, primary committees are permitted to take at least a 40% depreciation on "any property used in the operation of the campaign whose purchase price exceeded \$2,000 when acquired by the committee." 11 C.F.R. § 9034.5(c)(1).

There is a question whether the expenditures for computer equipment are qualified campaign expenses for the Primary Committee. Many of the Primary Committee's computer requirements (processing matching fund submissions, preparing disclosure reports, scheduling travel plans) were handled by outside vendors such as Public Office Corporation and Worldwide Travel, Inc. throughout the course of the campaign. However, the Primary Committee asserts that it used the computer equipment to: (1) increase its correspondence capability and activity; and (2) engage in "delegate tracking" in preparation

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for the convention.18/ Additionally, the Primary Committee asserts that its previous computer system often malfunctioned because it could not handle all the necessary users, and therefore, a replacement was sought. Finally, the Primary Committee notes that all its existing files were transferred to the new mainframe system once it came on-line prior to DOI.

As documentary support for these arguments, the Primary Committee produced three memoranda regarding the computer system from Sherry Curry, a Primary Committee staff member to Barbara Yates, the Primary Committee's accountant. One memorandum, dated June 27, 1994, states that the Primary Committee purchased the new mainframe computer to increase user capacity since the leased system could only handle 80 devices (terminals, modems, printers) before suffering breakdowns, and the Primary Committee submitted three sample computer repair work orders from these breakdowns. Once the new mainframe came on-line, more devices could be operated at the same time. Similarly, in a June 24, 1994 memoranda from Ms. Curry to Ms. Yates, it is stated that the Primary Committee's incoming correspondence level was increasing and because of the need to respond, the Primary Committee needed greater computer capacity. The memorandum includes a list of the biweekly incoming correspondence amounts demonstrating that in the last two weeks before the DOI, the incoming correspondence level increased to 6,036 incoming pieces, up from approximately 3,000 incoming pieces over the previous biweekly periods dating back to February 1, 1992.19/ Primary Committee Response, Exhibit 21. Finally, a third memorandum asserts that delegate tracking and convention operations were performed on certain unspecified personal computers. It appears that the Primary Committee is referring to the personal computers purchased from Future Now, Inc.

The Primary Committee response to the interim report and the computer vendors' invoices indicate that the ICL, Inc. mainframe computer came on-line at least on June 25, 1992, and that the Primary Committee files were inserted on this system. Thus, there is evidence that the Primary Committee had the

<sup>18/</sup> Based on the Primary Committee's descriptions in their response to the interim report, "delegate tracking" on the computer system apparently would include using computers to prepare correspondence to the delegates, and to log phone calls made to delegates. The Primary Committee response appears to also indicate that computers were used for general convention preparation and logistics.

<sup>19/</sup> However, the memorandum does not indicate the subject matter of the incoming correspondence (e.g. contributions, bills, letters), whether the Primary Committee answered the correspondence at the same level that it was incoming, and how the computer system would be used to process either incoming or outgoing mail.

Memorandum to Robert J. Costa Pinal Audit Report Clinton for Preside Committee (LRA \$449/AR \$94-17) Page 13

equipment before DOI, during the timeframe from June 25, 1992 through July 15, 1992.20/ Similarly, it appears that the only peripherals that the Primary Committee possessed at the end of the campaign were the W.P. Halone peripherals it owned from July 11, 1992 on 21/ Additionally, it appears that the Future Now, Inc. personal computers were used in the convention operations.22/

The facts at issue present difficult questions concerning how to distinguish legitimate primary campaign activity from activity that is geared towards the general election campaign. In the instant matter, it is clear that the computer equipment was used extensively throughout the general election campaign. There is also some evidence that the Primary Committee had most of the computer equipment in its possession prior to DOI. However, the evidence submitted to demonstrate the extent to which the Primary Committee used the computer equipment is limited. The documentation submitted to date consists of unsworn memoranda produced in response to the interim report. Given the limited information provided and the questions that remain regarding the computer system, the Primary Committee should be required to provide documentation with more probative value such as sworn affidavits and contemporaneous documentation or memoranda. For example, the Primary Committee could provide delegate tracking reports produced by the system and comprehensive computer maintenance records. If the Primary Committee can provide additional documentation demonstrating its use of the computer system, we believe that the costs incurred for the system would be qualified campaign expenses for the Primary Committee and the value of the asset determined pursuant

<sup>20/</sup> We note there is a dispute over when the new system came on-line. The Primary Committee ordered the new mainframe computer from ICL, Inc. on May 28, 1992 (invoice date), but the permanent equipment was only installed on June 25, 1992. The Primary Committee asserts that ICL, Inc. provided it a loaner during the interim period, but this assertion is undocumented. Thus, it appears that the new mainframe was installed only two weeks prior to the start of the convention.

<sup>21/</sup> We note that the devices that the Primary Committee appears to have agreed to purchase on June 30, 1992 (invoice date) from W.P. Malone for \$104,174 were actually being leased by the Primary Committee up to July 11, 1992 since the purchase invoice and lease invoices list the exact same equipment. So, it appears that the Primary Committee only became the owner of these goods at the time the convention started (or owned and leased the equipment concurrently).

<sup>22/</sup> The costs for fifty-one personal computers ordered from Future Now, Inc. were incurred by the Primary Committee on May 29, 1992 (invoice date). Additional personal computers were ordered by the Primary Committee from Future Now, Inc. and delivered on June 23, 1992, June 29, 1992, and July 15, 1992.

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to section 9034.5(c)(l) of the Commission's regulations for purposes of the Primary Committee's NOCO Statement.

We concur with the proposed report's conclusion that the polling expenses paid by the Primary Committee to Greenberg-Lake (\$108,622) and Opinion Research Calling (\$93,904) are general election campaign expenses. Polling expenditures are specifically provided for in 11 C.F.R. § 9003.4(a)(1) as qualified campaign expenses for the general election. The polls concerned the general election itself in that they measured the candidate's popularity versus the other likely candidates in the general election, George Bush and Ross Perot.23/ Indeed, two of the polls were taken after the roll call vote for the nomination was completed at the convention. With regard to the Primary Committee's argument that the polls decrease in value at a rapid rate, we view this as irrelevant since we view the polls as general election expenses.

We concur with the report's treatment of the expenditures for various services (e.g., expenditures to Air Advantage and I.K. Electric) that were provided to the Primary Committee which seem to have been only for the incidental benefit of the Primary Committee. An example of this is the reconfiguration of the candidate's airplane just prior to the convention. The actual work appears to have been completed prior to the convention. However, the reconfigured plane was used only once prior to DOI. With these types of expenditures, we recommend that the Primary Committee be allowed to reimburse the General Committee to account for the Primary Committee's use.

Finally, we concur that all costs associated with the biographical film about the candidate entitled "The Man From Hope" are general election expenses. In Reagan-Bush '84, the Commission specifically addressed the issue of commercial production costs associated with a television commercial produced by the primary committee but aired during the general election. Statement of Reasons supporting Final Repayment Determination in Reagan-Bush '84 General, at 9-12 (July 11, 1988). The Commission concluded that the date of broadcast for media projects (i.e., the date when commercials, films, etc. are aired or broadcasted), not the date of production, determines whether such projects are primary or general election

<sup>23/</sup> The Commission has in the past viewed the content of the expenditure to determine the purpose of that expenditure. See AO 1984-15 (after scrutiny of the content of certain television commercials, the Commission concludes that "[t]he clear import and purpose of the these proposed advertisements is to diminish the support for any Democratic Party presidential nominee ...").

Final Audit Report Clinton for President Committee (LRA \$449/AR \$94-17) Page 15

expenditures.24/ "The Man from Hope" film was shown at the convention after the candidate was nominated, as well as on several subsequent dates.25/ Therefore, these expenses are not qualified campaign expenses for the primary election.

# VI. RECEIPT OF MATCHING FUNDS IN RICESS OF ENTITLEMENT (III.D.)

The proposed report recommends that the Commission make an initial repayment determination of \$3,464,150 on the basis that the Primary Committee received public funds in excess of its entitlement. The report notes that the Primary Committee received certain contributions and then redesignated the contributions to the GELAC in a manner inconsistent with the Commission's regulations at 11 C.F.R. \$ 9003.3(a)(1)(iii) since the Primary Committee had remaining debts to satisfy at the time of the redesignations. The report seeks to treat the contributions as primary contributions, nullifying the impermissible redesignations. When the subject contributions are applied to the Primary Committee's NOCO Statement as an asset, the funds decrease the Committee's net outstanding campaign obligations and results in the repayment to the United States Treasury based on receiving funds in excess of the Primary Committee's entitlement.26/

<sup>24/</sup> The Commission concluded that the commercial at issue aired repeatedly during the general election campaign, despite the Primary Committee's arguments to the contrary. Reagan-Bush '84 Statement of Reasons, p. 11. There, the Commission rejected the primary committee's assertion that production costs should only be allocated to the primary campaign.

<sup>25/</sup> The Primary Committee contests the Commission's determination that the candidate's DOI is July 15, 1992. The DOI is the "date on which the party nominates its candidate." 11 C.F.R.
\$ 9032.6(a). Although the Commission has not defined the word "nomination," the Commission has previously viewed the completion of a convention roll call vote which nominates a candidate as the "nomination." The Primary Committee's suggestion to defer to a political party's definition of the term "nomination" will lead to inconsistent applications since every party could define it differently. Moreover, the Commission notified the Primary Committee by letter dated August 4, 1992 that July 15, 1992 was the DOI, and the Primary Committee did not object to this determination until now. As a result, we concur with the proposed report's conclusion that the DOI was July 15, 1992, the date that the convention roll call vote nominating the candidate was completed.

<sup>26/</sup> The proposed Final Audit Report for the General Committee recommends that the GELAC reimburse the Primary Committee for the improperly redesignated funds.

Pinal Audit Report Clinton for President Committee (LRA \$449/AR \$94-142) Page 16

In response to the interim report, the Primary Committee argues that the subject contributions were undesignated, and thus, under 11 C.F.R. § 110.1(b)(2)(ii), could be viewed as GELAC contributions since they were received after the candidate's DOI. The Primary Committee contends that the redesignations were performed by mistake by a former vendor. The Primary Committee further asserts that it should not be penalized for setting a cut-off date for receiving contributions in the belief that it has no remaining debts "without the benefit of hindsight." Primary Committee Response, at 40. this respect, the Primary Committee challenges the Commission practice of applying private contributions against a deficit on its NOCO Statement prior to applying matching funds against the deficit. The Frimary Committee believes that if anticipated matching funds were applied against its deficit as reflected on the NOCO Statement, it would have been permitted to make the redesignations.

We concur with the report that the Primary Committee received matching funds in excess of its entitlement. The determination of whether a contribution is designated for a particular election turns on the contributor's donative intent. See AO 1990-30. Arguably, the contributions in question were designated to the Primary Committee since they were made payable to "Clinton for President" or a similar entity and received when the Primary Committee had outstanding debts. 27/ See 11 C.F.R. \$ 110.1(b)(4)(i). The Commission has permitted publicly-financed presidential campaigns to treat contributions received post-DOI as primary receipts and submit them for matching if they have outstanding debts. Further, Commission regulations condition redesignations of a primary committee's contributions on the fact that the contributions represent funds in excess of the amount needed to pay remaining primary debts, thus, it is anticipated that a primary committee will continue to receive private contributions designated to it after DOI. See 11 C.F.R. § 9003.3(a)(1)(iii).

The Primary Committee benefited from this approach, receiving public funds for contributions received post-DOI that were virtually identical to these at issue here. The Primary Committee has not advanced a credible reason for distinguishing between the post-DOI contributions submitted for matching and those contributions that it now claims were contributions to the GELAC. We do not believe that the Primary Committee can apply the designation rules in a manner that will allow it to arbitrarily claim that certain contributions are primary contributions that are matchable and reverse its position to increase its entitlement to public funds by claiming that

<sup>27/</sup> We recommend that you attach to your report an exhibit demonstrating the amounts of contributions designated for each specific entity (e.g., Bill Clinton, Bill Clinton for President, Bill Clinton for President Committee, Team Clinton).

Final Audit Report Clinton for Preside Committee (LRA #449/AR #94-17) Page 17

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similarly designated contributions are designated to the GELAC. The designation rules do not operate to thus allow a committee to manipulate its entitlement to public funds.

The Primary Committee's argument that matching funds be counted into the NOCO Statement as of the time of submission, rather than receipt of such funds, would also allow the Primary Committee to manipulate its entitlement to public funds. The Primary Committee's claim that the Commission's NOCO Statement calculation system is unfair is based solely on the fact the Primary Committee miscalculated its remaining entitlement and expenditures. The Commission's regulations account for the fact that there may be miscalculations in the NOCO Statement because the Primary Committee is required to submit a revised NOCO Statement with each submission for matching funds after DOI and the Primary Committee will be required to make a repayment if it it later determined that the payments exceeded the Primary Committee's net outstanding campaign obligations. 11 C.F.R. \$\$ 9034.5(f)(1) and 9038.2(b)(1)(i).

Purther, while treating future matching funds as an accounts receivable to eliminate its debts, the Primary Committee nevertheless submitted a NOCO Statement indicating that it was in a deficit position so that it would be entitled to receive the anticipated matching funds. This places the Primary Committee in the contradictory position of asserting that it has debts and does not have debts in order to obtain the maximum benefits of the public financing process. Commission's regulations do not contemplate treating future matching funds as an accounts receivable on the NOCO Statement. The accounts receivable (or amounts owed) that can be listed as assets on the NOCO Statement generally include credits, refunds of deposits or rebates from qualified campaign expenditures. C.F.R. § 9034.5(a)(2)(iii) (discussing calculation of NOCO statements). The result of including anticipated matching funds as an asset is that the Primary Committee is able to increase its entitlement based on speculation that the contributions will in fact be matched. 11 C.F.R. \$ 9034.5(a).

Jeaned in audit

General

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#### FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

November 3, 1994

#### MEHORANDUN

TO:

Robert J. Costa

Assistant Staff Director

Audit Division

THROUGH:

John C. Swin

Staff Directo

FROM:

Lawrence M. Moble

General Counsel

Kim Bright-Coleman Associate General Counsel

Lorenzo Holldway A.W. Assistant General Counsel

Peter G. Blumberg

Attorney

Abel Montez MALT PUS

Andre Pineda Attorney

SUBJECT:

Proposed Final Audit Report on Clinton/Gore '92

Committee and Clinton/Gore '92 General Election

Compliance Fund (LRA #420/AR #94-18)

#### ı. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report on the Clinton/Gore '92 Committee ("the General Committee") and Clinton/Gore '92 General Election Compliance Fund ("the GELAC") submitted to this Office on August 31, 1994. The following memorandum summarizes our

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12/27/94 Page 109,

TAB 21 M DOC B

Memorandum to Robert J. Costa

Final Audit Report

Clinton/Gore '92 Command Gen'l Election Complete Fund

(LRA # 420/AR #94-18)

Page 2

comments on the proposed report.1/ If you have any questions concerning our comments, please contact Peter G. Blumberg, the lead attorney assigned to this audit.

#### II. ITEMIZATION OF OFFSETS (II.B.3.)2/

The proposed report raises the issue of whether the General Committee is required to itemize refunds and rebates made by various entities to its travel agent, Worldwide Travel, Inc. ("Worldwide"). The General Committee argues that it was not required to do so, and cites Advisory Opinion ("AO") 1983-25 as support for its position. The proposed report, however, concludes that AO 1983-25 is not relevant, and further states that AO 1983-25 cannot be extended to non-media wendors.

In AO 1983-25, the Commission found that a committee hap report its payments to media consultants as expenditures, and that payments by media consultants to other persons, which are their used to purchase services or products used in connection with the consultants' contract, need not be escaparately reported. The Commission noted the following • factors as significant in making this determination: (1) the consultant's had a legal existence that was separate and distinct from the committee's operations; (2) the consultants' principals did not hold any committee staff positions; (3) the committee was conducting arms-length negotiations with the consultants that resulted in a formal contract; (4) the consultants were not required to devote their "full efforts" to the contract with the Committee, and the consultants expected to have other media contracts with other committees and business entities during the campaign period; and (5) the committee had no interest in the consultants' other contracts.

We disagree with the proposed report's conclusion that AO 1983-25 is not relevant to itemizations made by Worldwide, and cannot be extended to non-media vendors. To the contrary, we believe that AO 1983-25 is relevant to determine whether the General Committee is required to report refunds and rebates for travel expenditures. AO 1983-25 contains no

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<sup>1/</sup> We recommend that the Commission consider this document in open session since the discussion is not exempt from disclosure under the Commission's Sunshine Regulations. 11 C.F.R. § 2.4. Parenthetical references are to the placement of the findings in the proposed report.

<sup>2/</sup> We suggest that you revise the title of this section to "Itemization of Refunds and Rebates." This is consistent with the title of the section dealing with the same subject matter in the proposed Final Audit Report for Clinton for President (the "Primary Committee.")

Memorandum to Robert J. Costa Final Audit Report Clinton/Gore '92 Comm. and Gen'l Election Compriance Fund (LRA # 420/AR #94-18) Page 3

language limiting its scope solely to media vendors, and AO 1983-25 factors have been applied by the Commission to determine the legitimacy of a non-media business vendor. See AO 1994-25. As such, we believe that AO 1983-25 allows the General Committee, subject to the above-stated factors, to contract with non-media vendors to perform campaign activities without requiring the General Committee to itemize and report vendor payments from third-party sources.

Notwithstanding the applicability of AO 1983-25 to the General Committee, we note that the General Committee response states that it satisfied the reporting obligations of AO 1983-25 without including supporting documentation. We believe, however, that if such documentation is provided, the General Committee may be able to satisfy the above-stated factors.

#### III. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES (III.B.3.)

The proposed report concludes that arguments made by the General Committee pertaining to the loss of two rental cars, and lost computer equipment and communication devices, were unpersuasive, and that General Committee expenditures for the replacement of these items are non-qualified campaign expenses subject to repayment. 3/ The proposed report concludes that the total amount to be repaid to the United States Treasury for apparent non-qualified campaign expenses is \$78,264. \$70,295 of this repayment amount consists of the above-stated lost equipment.

The General Committee states that it was not commercially feasible to have purchased insurance to cover such losses. Moreover, the General Committee contends that due to the prohibitive cost of such commercial insurance, its only alternative was self-insurance. A committee's decision to purchase or not purchase commercial insurance is a relevant factor in determining whether a committee made a "good faith" effort to safeguard its equipment. See Memorandum to Robert J. Costa, Re: Committee on Arrangements for the 1992 Republican National Convention — Legal Comments on Proposed Interim Audit Report, at 4-7 (September 17, 1993).4/ Other relevant factors may include a committee's

<sup>3/</sup> This equipment includes two lost automobiles from Alamo Rent-A-Car valued at \$34,768, and lost computer and communication equipment valued at \$35,527.

The Interim Audit Report for the Committee on Arrangements for the 1992 Republican National Convention was interpreting permissible uses for convention expenses. Compare 11 C.F.R. \$ 9008.6(a) (permissible use of convention expenses) with 11 C.F.R. \$ 9002.11(a)(1) (qualified campaign expenses).

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policies and practices promulgated to safeguard campaign equipment, and the committee's enforcement of such policies.

We recognize the General Committee promulgated policies to safeguard campaign equipment, including computers, communication devices, and rental cars. See General Committee Response, Exhibit 11 ("Loss Prevention Policy," and policy entitled "Equipment."). The mere existence of such a policy, however, is not determinative. In this instance, The General Committee has not not demonstrated that it enforced these policies. The General Committee provided no evidence that it withheld the last two paychecks of the staff persons responsible for the rental of two lost rental cars, as required under its "Lost Prevention Policy."5/ Moreover, the General Committee has failed to provide any evidence indicating what efforts it made to locate the lost computer equipment and communication devices. 6/ Therefore, the General Committee should be required to make a repayment of \$70,295 to the United States Treasury for the value of the lost or missing equipment.

The General Committee states, in part, that because it believes no committee member engaged in misconduct or gross negligence "it was unnecessary to execute the Committee's policy of withholding salaries." Nevertheless, the "Loss Prevention Policy" does not require any finding of misconduct or gross negligence. See General Committee Response, Exhibit 11. Furthermore, the General Committee failed to provide any evidence See General Committee Response, Exhibit 11. showing why the actions taken by the particular staff members assigned to the rental lost automobiles did not constitute abuse, misconduct, or gross negligence. See Memorandum to Robert J. Costa, Re: Committee on Arrangements for the 1992 Republican National Convention -- Legal Comments on Proposed Interim Audit Report, at 4-7 (September 17, 1993) (considerations to be examined include: (1) the value of the lost equipment as a percentage of the total value of the equipment; (2) whether a committee made a good faith effort to safeguard its equipment; (3) what efforts, if any, a committee made to locate the lost equipment; (4) if applicable, what contractual terms were made between the committee and its leasing entity; and (5) whether the committee can prove that no fraud of abuse occurred.).

The General Committee states that with respect to the two lost rental cars, it went to "great lengths" to recover their losses. For example, Exhibit 11 to the General Committee's response contains a letter from Alamo Rent-A-Car ("Alamo") detailing its investigative efforts, as well as an undated and unsigned memorandum detailing non-Alamo related investigative efforts. These exhibits show that the General Committee may have attempted to locate the lost rental cars. Such efforts, however, must be examined in conjunction with the General Committee's enforcement of its "Loss Prevention Policy." See consideration \$2, set forth in footnote \$5.

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## IV. EXCEEDING EXPENDITURE LIMITATION -- AMOUNT DUE THE PRIMARY COMMITTEE (III.B.2.)

The finding in the proposed report that the General Committee exceeded its expenditure limitation by \$684,220. Absent evidence that the General Committee has not exceeded the expenditure limitation, the report recommends that the GELAC transfer this amount to the General Committee, but makes no repayment recommendation. A portion of the amount subject to the overall expenditure limitation includes an account payable of \$844,913 for expenses that were originally paid by the Primary Committee for setting up a basic campaign organization for the general election. The report notes that the Primary Committee made expenditures for items such as computers and polling in the weeks prior to the date of ineligibility ("DOI") when most or all state primary elections had been held.7/ The report reasons that expenditures for certain goods or services made so late in the primary campaign could have no other purpose than to be pre-expenditure report period expenses for the general election committees. Since these expenses were start-up costs, they are qualified campaign expenses for the General Committee, and subject to the overall expenditure limitation. Thus, the expenditure results in the General Committee exceeding its expenditure limitation.8/

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The General Committee urges the application of essentially a "bright line" test based on the date of a candidate's nomination to support its position that the expenses in question were qualified campaign expenses for the primary election. The General Committee argues that costs for goods and services incurred by a primary committee before DOI and used before DOI are qualified campaign expenses for a primary committee. With regard to the expenditures for equipment and facilities (e.g., mainframe computers, personal computers, printers, keyboards, monitors, modems, software), the General Committee argues that the expenditures were qualified campaign expenses for the primary election because the goods were purchased and used before the DOI. Thus, the

<sup>7/</sup> State primary elections were held through June 9, 1992. The candidate's DOI was July 15, 1992.

<sup>8/</sup> The Final Audit Report for the Primary Committee permits the Primary Committee to collect a reimbursement from the General Committee for those goods and services paid for by the Primary Committee which were General Committee expenses. The Primary Committee can also choose to pay the United States Treasury for these non-qualified expenditures if it chooses not to seek reimbursement from the General Committee. If the General Committee does not reimburse the Primary Committee, it would not exceed the expenditure limit.

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General Committee contends that as a primary asset, the Primary Committee was permitted to sell the equipment to the General Committee at a 40% depreciation, the required price pursuant to 11 C.F.R. § 9034.5.

With regard to the polling expenditures, the General Committee argues that the expenditures were qualified campaign expenses for the Primary Committee because the polls were conducted prior to the DOI and concerned issues related to the seeking of the nomination. In addition, the General Committee contends that the polls had a limited shelf life which had expired by the time the general election campaign began. The General Committee asserts that the Commission has acknowledged the limited shelf life of polls in its own regulations. See 11 C.F.R. § 106.4(g).

We believe that the standard advocated by the General Committee would enable a primary committee to use private contributions and public matching funds to pay a portion of the general election campaign expenses, thus circumventing the general election expenditure limitation and the law's prohibition on receipt of private contributions by publicly funded general election candidates. 2 U.S.C. \$ 441a(b)(1)(B); 26 U.S.C. \$ 9003(b)(1) and (2). Moreover, such an interpretation is inconsistent with 11 C.F.R. § 9003.4(a)(1), which permits general election campaigns to incur expenses prior to the beginning of the expenditure report period. This regulation would not be necessary if all expenditures made prior to the primary date of ineligibility were qualified campaign expenses of the primary committee, even if the expenditures related to the general election.

However, our analysis differs from that of the Audit Division because we believe that some of the expenditures may have had a dual purpose for the Primary Committee and the General Committee, and those expenditures could be allocated between the two committees if the purpose is documented. The central issue raised is whether the expenditures were made "in connection ... with [the primary] campaign for nomination" or "incurred to further a candidate's [general] campaign for election to the Office of President...."

Compare 11 C.F.R. § 9032.9(a)(2) (defining qualified campaign expenses for primary committees) with 11 C.F.R.

§ 9002.11(a)(1) (defining qualified campaign expenses for general committees).

A "bright line" test based solely on the date that an expenditure is incurred has never been applied by the Commission to determine whether a particular expense is a qualified campaign expense for the primary or general election. Rather, the two key elements for assessing qualified campaign expenses are timing and the subject matter requirement of "made in connection with" or "incurred to further." 11 C.F.R. \$\$ 9032.9(a)(2) and 9002.11(a)(1). It

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is not sufficient merely for an expenditure to be incurred prior to the candidate's date of ineligibility to be considered a qualified campaign expenditure. Rather, the correct standard for determining whether an expenditure is a qualified campaign expense relies on both the timing of the expenditure and the nature of the expenditure. See AO 1984-15.

The Commission has previously considered the purposes of expenditures when allocating costs between primary and general presidential committees. In the Reagan Bush '84 audit, the Commission concluded that certain specific expenditures for polling, consulting, and voter registration incurred prior to the candidate's DOI and apparently related to the general election campaign could be considered qualified campaign expenses of the primary committee since the purpose of the expenditures related to "delegate tracking." Final Audit Report on Reagan Bush '84 Primary (July 7, 1986). However, the Reagan Bush general committee also reimbursed the primary committee \$64,000 for telemarketing expenditures incurred prior to the candidate's date of ineligibility, and the Commission allocated costs between the committees for advertising production costs incurred during the primary campaign for certain advertisements used during both the primary and general campaigns, thus demonstrating that the timing of the expenditure alone does not determine whether it is related to the primary or general election. Id.; Statement of Reasons supporting Final Repayment Determination in Reagan-Bush '84 General, at 9-12 (July 11, 1988). This precedent supports examining all of the particular facts surrounding an expenditure.

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> Moreover, matters concerning coordinated party expenditures, which involve publicly-financed presidential campaigns and expenditure limitations, are analogous to the issue of qualified campaign expenses presented here. situations involving coordinated party expenditures, the Commission has considered not only the timing, but also the purpose of expenditures when determining to which election an expenditure should be attributed. AO 1984-15. For example, in AO 1984-15, the Commission noted that while "timing is relevant, " coordinated party expenditures are not restricted to the time period between the nomination and the general election, and it would be inconsistent with the purpose of the limitation on coordinated expenditures to "permit expenditures made prior to nomination but with the purpose and effect of influencing the outcome of the presidential general election to escape this limitation." AO 1984-15.

It is possible that some of the expenditures at issue were intended, in part, for activities related to securing the candidate's nomination. With regard to capital assets determined to be primary committee assets, we believe the

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Commission would have to allocate those expenditures pursuant to the method used for depreciating capital assets under 11 C.F.R. § 9034.5(c)(1). For the purpose of calculating a committee's Statement of Net Outstanding Campaign Obligations ("NOCO Statement"), primary committees are permitted to take at least a 40% depreciation on "any property used in the operation of the campaign whose purchase price exceeded \$2,000 when acquired by the committee." 11 C.F.R. § 9034.5(c)(1).

There is a question whether the expenditures for computer equipment are qualified campaign expenses for the Primary Committee. Many of the Primary Committee's computer requirements (processing matching fund submissions, preparing disclosure reports, scheduling travel plans) were handled by outside vendors such as Public Office Corporation and Worldwide Travel, Inc. throughout the course of the campaign. However, the General Committee asserts that the Primary Committee used the computer equipment to: (1) increase its correspondence capability and activity; and (2) engage in "delegate tracking" in preparation for the convention.9/ Additionally, the General Committee asserts that the Primary Committee's previous computer system often malfunctioned because it could not handle all the necessary users, and therefore, a replacement was sought. Finally, the General Committee notes that all of the Primary Committee's existing files were transferred to the new mainframe system once it came on-line prior to DOI.

As documentary support for these arguments, the General Committee produced three memoranda regarding the computer system from Sherry Curry, a Primary Committee staff member to Barbara Yates, the Primary Committee's accountant. memorandum, dated June 27, 1994, states that the Primary Committee purchased the new mainframe computer to increase user capacity since the leased system could only handle 80 devices (terminals, modems, printers) before suffering breakdowns, and the General Committee submitted three sample computer repair work orders from these breakdowns. Once the new mainframe came on-line, more devices could be operated at the same time. Similarly, in a June 24, 1994 memoranda from Ms. Curry to Ms. Yates, it is stated that the Primary Committee's incoming correspondence level was increasing and because of the need to respond, the Primary Committee needed greater computer capacity. The memorandum includes a list of

<sup>9/</sup> Based on the Primary Committee's descriptions in their response to the interim report, "delegate tracking" on the computer system apparently would include using computers to prepare correspondence to the delegates, and to log phone calls made to delegates. The Primary Committee response appears to also indicate that computers were used for general convention preparation and logistics.

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the biweekly incoming correspondence amounts demonstrating that in the last two weeks before the DOI, the incoming correspondence level increased to 6,036 incoming pieces, up from approximately 3,000 incoming pieces over the previous biweekly periods dating back to February 1, 1992.10/ Primary Committee Response, Exhibit 21. Finally, a third memorandum asserts that delegate tracking and convention operations were performed on certain unspecified personal computers. It appears that the Primary Committee is referring to the personal computers purchased from Future Now, Inc.

The General Committee response to the interim report and the computer vendors' invoices indicate that the ICL, Inc. mainframe computer came on-line at least on June 25, 1992, and that the Primary Committee files were inserted on this system. Thus, there is evidence that the Primary Committee had this equipment prior to DOI, during the timeframe from June 25, 1992 through July 15, 1992.11/Similarly, it appears that the only peripherals that the Primary Committee possessed at the end of the campaign were the W.P. Malone peripherals it owned from July 11, 1992 on.12/

<sup>10/</sup> However, the memorandum does not indicate the subject matter of the incoming correspondence (e.g. contributions, bills, letters), whether the Primary Committee answered the correspondence at the same level that it was incoming, and how the computer system would be used to process either incoming or outgoing mail.

<sup>11/</sup> We note there is a dispute over when the new system came on-line. The Primary Committee ordered the new mainframe computer from ICL, Inc. on May 28, 1992 (invoice date), but the permanent equipment was only installed on June 25, 1992. The Primary Committee asserts that ICL, Inc. provided it a loaner during the interim period, but this assertion is undocumented. Thus, it appears that the new mainframe was installed only two weeks prior to the start of the convention.

<sup>12/</sup> We note that the devices that the Primary Committee appears to have agreed to purchase on June 30, 1992 (invoice date) from W.P. Malone for \$104,174 were actually being leased by the Primary Committee up to July 11, 1992 since the purchase invoice and lease invoices list the exact same equipment. So, it appears that the Primary Committee only became the owner of these goods at the time the convention started (or owned and leased the equipment concurrently).

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Additionally, it appears that the Future Now, Inc. personal computers were used in the convention operations.13/

The facts at issue present difficult questions concerning how to distinguish legitimate primary campaign activity from activity that is geared towards the general election campaign. In the instant matter, it is clear that the computer equipment was used extensively throughout the general election campaign. There is also some evidence that the Primary Committee had most of the computer equipment in its possession prior to DOI. However, the evidence submitted to demonstrate the extent to which the Primary Committee used the computer equipment is limited. The documentation submitted to date consists of unsworn memoranda produced in response to the interim report. Given the limited information provided and the questions that remain regarding the computer system, the General Committee should be required to provide documentation with more probative value such as sworn affidavits and contemporaneous documentation or memoranda. For example, the General Committee could provide delegate tracking reports produced by the system and comprehensive computer maintenance records. If the General Committee can provide additional documentation demonstrating the Primary Committee's use of the computer system, we believe that the costs incurred for the system would be qualified campaign expenses for the Primary Committee and the value of the asset determined pursuant to section 9034.5(c)(1) of the Commission's regulations for purposes of the Primary Committee's NOCO Statement.

We concur with the proposed report's conclusion that the polling expenses paid by the Primary Committee to Greenberg-Lake (\$108,622) and Opinion Research Calling (\$93,904) are general election campaign expenses. Polling expenditures are specifically provided for in 11 C.F.R. \$ 9003.4(a)(1) as qualified campaign expenses for the general election. The polls concerned the general election itself in that they measured the candidate's popularity versus the other likely candidates in the general election, George Bush and Ross Perot.14/ Indeed, two of the polls were taken after

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<sup>13/</sup> The costs for fifty-one personal computers ordered from Future Now, Inc. were incurred by the Primary Committee on May 29, 1992 (invoice date). Additional personal computers were ordered by the Primary Committee from Future Now, Inc. and delivered on June 23, 1992, June 29, 1992, and July 15, 1992.

<sup>14/</sup> The Commission has in the past viewed the content of the expenditure to determine the purpose of that expenditure. See AO 1984-15 (after scrutiny of the content of certain television commercials, the Commission concludes that "[t]he clear import and purpose of the these proposed advertisements is to diminish the support for any Democratic Party presidential nominee ...").

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the roll call vote for the nomination was completed at the convention. With regard to the General Committee's argument that the polls decrease in value at a rapid rate, we view this as irrelevant since we view the polls as general election expenses.

Finally, we concur that all costs associated with the biographical film about the candidate entitled "The Man From Hope" are general election expenses. In Reagan-Bush '84, the Commission specifically addressed the issue of commercial production costs associated with a television commercial produced by a primary committee but aired during the general election. Statement of Reasons supporting Final Repayment Determination in Reagan-Bush '84 General, at 9-12 (July 11, 1988). The Commission concluded that the date of broadcast for media projects (i.e., the date when commercials, films, etc. are aired or broadcasted), not the date of production, determines whether such projects are primary or general election expenditures.15/ The "Man from Hope" film was shown at the convention after the candidate was nominated, as well as on several subsequent dates.16/ Therefore, these expenses are not qualified campaign expenses for the general election.

# V. FUNDS REDESIGNATED FROM PRIMARY COMMITTEE TO GELAC (II.A.2.b.)

The proposed report recommends that the GELAC pay the Primary Committee \$1,296,517, representing funds impermissibly redesignated to the GELAC. The report notes

<sup>15/</sup> The Commission concluded that the commercial at issue aired repeatedly during the general election campaign, despite the Primary Committee's arguments to the contrary. Reagan-Bush '84 Statement of Reasons, p. 11. The Commission rejected the primary committee's assertion that production costs should only be allocated to the primary campaign.

The General Committee contests the Commission's determination that the candidate's DOI is July 15, 1992. The DOI is the "date on which the party nominates its candidate." 11 C.F.R.

§ 9032.6(a). Although the Commission has not defined the word "nomination," the Commission has previously viewed the completion of a convention roll call vote which nominates a candidate as the "nomination." The General Committee's suggestion to defer to a political party's definition of the term "nomination" will lead to inconsistent applications since every party could define it differently. Moreover, the Commission notified the Primary Committee by letter dated August 4, 1992 that July 15, 1992 was the DOI, and the Primary Committee did not object to this determination until now. As a result, we concur with the proposed report's conclusion that the DOI was July 15, 1992, the date that the convention roll call vote nominating the candidate was completed.

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that the Primary Committee received certain contributions and then redesignated the contributions to the GELAC in a manner inconsistent with the Commission's regulations at 11 C.F.R. § 9003.3(a)(1)(iii). The report seeks to treat the contributions as primary contributions, nullifying the impermissible redesignations.17/

In response to the interim report, the General Committee argues that the subject contributions were undesignated, and thus, under 11 C.F.R. § 110.1(b)(2)(ii), could be viewed as GELAC contributions since they were received after the candidate's DOI. The General Committee contends that the redesignations were performed by mistake by a former vendor. The General Committee further asserts that the Primary Committee should not be penalized for setting a cut-off date for receiving contributions in the belief that it has no remaining debts "without the benefit of hindsight." General Committee Response, at 6. In this respect, the General Committee challenges the Commission practice of applying private contributions against a deficit on the Primary Committee's NOCO Statement prior to applying matching funds against the deficit. The General Committee believes that if anticipated matching funds were applied against the Primary Committee's deficit as reflected on the NOCO Statement, the Primary Committee would have been permitted to make the redesignations.

We concur with the report that the GELAC must transfer funds to the Primary Committee. The determination of whether a contribution is designated for a particular election turns on the contributor's donative intent. See AO 1990-30. Arguably, the contributions in question were designated to the Primary Committee since they were made payable to "Clinton for President" or a similar entity and received when the Primary Committee had outstanding debts.18/ See 11 C.F.R. \$ 110.1(b)(4)(i). The Commission has permitted publicly-financed presidential campaigns to treat contributions received post-DOI as primary receipts and submit them for matching if they have outstanding debts. Further, Commission regulations condition redesignations of a primary committee's contributions on the fact that the

<sup>17/</sup> When these contributions are added to the Primary Committee's Statement of Net Outstanding Campaign Obligations ("NOCO Statement") as an asset, the funds decrease the Primary Committee's net outstanding campaign obligations and results in the repayment to the United States Treasury based on receiving funds in excess of the Primary Committee's entitlement.

<sup>18/</sup> We recommend that you attach to your report an exhibit demonstrating the amounts of contributions designated for each specific entity (e.g., Bill Clinton, Bill Clinton for President, Bill Clinton for President Committee, Team Clinton).

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contributions represent funds in excess of the amount needed to pay remaining primary debts, thus, it is anticipated that a primary committee will continue to receive private contributions designated to it after DOI. See 11 C.F.R. \$ 9003.3(a)(1)(iii).

The Primary Committee benefited from this approach, receiving public funds for contributions received post-DOI that were virtually identical to these at issue here. The General Committee has not advanced a credible reason for distinguishing between the post-DOI contributions submitted for matching by the Primary Committee and those contributions that it now claims were contributions to the GELAC. We do not believe that the Primary Committee can apply the designation rules in a manner that will allow it to arbitrarily claim that certain contributions are primary contributions that are matchable and reverse its position to increase its entitlement to public funds by claiming that similarly designated contributions are designated to the GELAC. The designation rules do not operate to thus allow a committee to manipulate its entitlement to public funds.

The General Committee's argument that matching funds be counted into the NOCO Statement as of the time of submission, rather than receipt of such funds, would also allow the Primary Committee to manipulate its entitlement to public The General Committee's claim that the Commission's NOCO Statement calculation system is unfair is based solely on the fact the Primary Committee miscalculated its remaining entitlement and expenditures. The Commission's regulations account for the fact that there may be miscalculations in the NOCO Statement because the Primary Committee is required to submit a revised NOCO Statement with each submission for matching funds after DOI and the Primary Committee will be required to make a repayment if it it later determined that the payments exceeded the Primary Committee's net outstanding campaign obligations. 11 C.F.R. §§ 9034.5(f)(1) and 9038.2(b)(1)(i).

Further, while treating future matching funds as an accounts receivable to eliminate its debts, the Primary Committee nevertheless submitted a NOCO Statement indicating that it was in a deficit position so that it would be entitled to receive the anticipated matching funds. This places the Primary Committee in the contradictory position of asserting that it has debts and does not have debts in order to obtain the maximum benefits of the public financing process. The Commission's regulations do not contemplate treating future matching funds as an accounts receivable on the NOCO Statement. The accounts receivable (or amounts owed) that can be listed as assets on the NOCO Statement generally include credits, refunds of deposits or rebates from qualified campaign expenditures. 11 C.F.R.

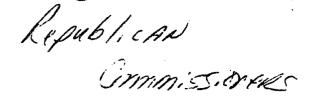
§ 9034.5(a)(2)(iii) (discussing calculation of NOCO

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statements). The result of including anticipated matching funds as an asset is that the Primary Committee is able to increase its entitlement based on speculation that the contributions will in fact be matched. 11 C.F.R. \$ 9034.5(a).

### FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463



Statement of Reasons
Final Audit Report of the Clinton for President Committee
Commissioners Joan D. Aikens, Lee Ann Elliott, Trevor Potter

On December 15, 1994, the Federal Election Commission considered the Final Audit Report on the Clinton for President Committee. Unfortunately, a major recommendation in this Report that required the Clinton Committee to make a substantial repayment of taxpayer funds was blocked by three Commissioners.

This unprecedented action involved the Clinton Committee's receipt of matching funds from the U.S. Treasury in excess of its entitlement. The Commission's Audit Division found, and the General Counsel agreed, that the Clinton Committee improperly diverted over a million dollars in private contributions from the Primary Committee to a separate "legal and accounting fund" for the General Election. However, the law requires these private contributions be used to pay the remaining debts of the primary committee.

The effect of this impermissible transfer was to artificially inflate the Primary Committee's debt. This caused the U.S. Treasury to make an overpayment of taxpayer funds to the Committee to cover that debt. Accordingly, the Audit Division and General Counsel recommended the Committee repay \$2.9 million to the U.S. Treasury. We voted for this recommendation because this result was clearly required by the Commission's regulations and previous presidential audits. We regretfully conclude that our three colleagues' failure to adhere to these rules, and their vote against this recommendation, can only be considered arbitrary and capricious.

I. Commission Regulations and Procedures Required the Clinton Committee Make a Repayment

The Commission's regulations at 9034.1(b) limit the amount of public funds a candidate may receive after the nomination to the net debt outstanding at the time a matching fund payment is received. To arrive at this debt calculation, all public and private contributions are subtracted from debts outstanding. Any net debt remaining would increase the candidate's

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entitlement to public funds to pay the debt. The long history of this regulation makes it clear that it was designed to encourage the payment of campaign debts, to the extent possible, with private contributions.1/

Commission regulations at part 9003.3(a)(1)(iii) also clearly state: Contributions that are made after the convention but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election may be redesignated for the legal and accounting compliance fund if the candidate obtains the contributor's redesignation in accordance with 11 C.F.R. 110.1. Contributions that do not exceed the contributor's limit for the primary election may be redesignated and deposited in the legal and accounting compliance fund only if:

(A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses:...

The requirement at 11 C.F.R. § 9034.1(b) that private contributions be used to pay a committee's debts was recently upheld in Lyndon H. LaRouche; LaRouche Democratic Campaign '88 v. FEC, 28 F.3d 137 (D.C. Cir. 1994). In LaRouche, the Court stated "the language (of 9034.1(b)) would appear to be dispositive. A candidate is entitled to receive post-DOI matching payments so long as net campaign obligations remain outstanding, and the regulation defines a candidate's remaining [NOCO] as the difference between the amount of his original NOCO and the sum of the contributions received...plus matching funds received... Whenever the sum of his post-DOI receipts equal the amount of his NOCO-whether those receipts be in the form of private contributions or matching payments from the public fisc - his entitlement to further matching payments comes to an end. Even if we were to find the regulation ambiguous, which we do not, we would still have to accept the Commission's interpretation of section 9034.1(b) unless we found it plainly inconsistent with the wording of the regulation, which it is not. 28 F.3d at 140 (emphasis added).

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(D) The contributions have not been submitted for matching.

(emphasis added).

This regulation was approved on a 6-0 vote by the Commission after the 1988 election cycle when a similar issue arose in the Dukakis audit. This regulation was designed to more clearly state the consistent position taken by the Commission from the first publicly financed election in 1976. In noting the need for this clearer regulation, Commissioner Thomas pointed out during the Dukakis audit that:

On its face, the (former) regulation would seem to allow the redesignation of post-primary designated contributions if the primary would have a debt afterward. However, it would be inconsistent with the Commission's congressional mandate to allow a committee to, in essence, create debt that would lead to entitlement for post ineligibility matching funds. In other words a committee should not be able to claim a net debt and hence entitlement to post ineligibility matching funds if it dissipated its permissible primary contributions to do so. Taken to its extreme, a committee could redesignate all of its unmatched contributions ... and unnecessarily create a huge deficit with a resulting claim for matching funds.

The current language of 9003.3(a)(1)(iii) pertaining to redesignation of post-primary designated contributions, effective April 8, 1987, evolved from a somewhat similar provision in the previous version of 11 C.F.R. 9003.3. However, the prior version made clear that such redesignations were permissible only if the primary committee retained sufficient funds to pay its remaining debts.

Contributions which are made after the beginning of the expenditure period but which are designated for the primary election may be deposited in the legal and accounting compliance fund: provided that the candidate already has sufficient funds to pay any outstanding campaign obligations incurred during the primary campaign...
[11 C.F.R. 9003.3(a)(1)(iii) (effective July 11, 1983).]

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Though the current language did not retain this protective phrasing, there appears to have been no intent to alter the prior approach. ... Indeed, as noted, it would be contrary to public policy to allow the creation of debt and the consequent entitlement to post ineligibility matching funds. Accordingly, the Committee should be permitted to redesignate and transfer—out to the GELAC only so much of the contributions as would not leave the Committee in a net debt position. The remaining amount in question, ... cannot be redesignated and transferred—out, must be repaid by GELAC, and must therefore be included in Committee's cash on hand figure. 2/

In order to clarify any ambiguity that may have occurred during the 1988 Presidential audits, the Commission revised its Presidential regulations for 1992 to make absolutely clear that public and private money be used for debt retirement, and that there is limited permissibility and several prerequisites for any redesignation of private funds. See 11 C.F.R. 9003.3(a)(1) (iii) and 9034.1(b).

#### II. Application of These Rules to the Clinton Committee

By splitting 3-3 on two repayment motions, the Commission failed to apply these regulations to the Clinton Committee. For example, there is no question that on the date of ineligibility (i.e., the date of Clinton's nomination, July 15, 1992), the Committee had a debt of over \$7 million. Solicitations prior to July 15 had clearly solicited funds for the primary campaign and all contributions received were made payable to the Primary Committee, and deposited into the primary account. Those solicitations reminded the contributor that the contribution could be matched. In fact, the last primary solicitation sent on July 17, which solicited funds to retire the primary debt, again reminded the contributor that the contribution could be matched. 3/

<sup>2/</sup> Quote of Commissioner Scott Thomas from the Final Audit Report on the Dukakis for President Committee, approved by Commission 6-0.

<sup>3/</sup> Subsequent solicitations were mailed for contributions to the General Election Legal and Accounting and Compliance Fund (the GELAC). Those contributions are not at issue here.

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Contributions deposited by the Primary Committee from these solicitations totaled \$5,863,410 between July 16 and October 2, 1992. In that same time frame, the Committee submitted final matching requests totaling \$6,046,107. The Committee received this inflated amount because they did not apply all of their private funds to their net outstanding campaign obligations. Instead, the Primary Committee sought redesignations from their contributors and transferred \$2,444,557 to the GELAC. This is in direct contravention of the Commission's regulations governing matching funds. 9034.1(b).

In other words, the Committee took contributor checks directly in response to primary solicitations, deposited them into the primary account and submitted \$2,600,519 for matching funds while at the same time taking other contributions from the same solicitations and, claiming they were intended for the GELAC, transferred them to the Legal and Accounting Compliance Fund.

In the Final Audit report, the Audit Division correctly recommended that the candidate had exceeded his entitlement to further matching funds as of the date on which private contributions and matching funds could have retired all debts. This was in accord with the previously cited public funding regulations, their Explanation and Justification, and the Presidential Compliance Manual. The amount the Audit Division calculated the Committee received in excess of its entitlement on this issue was over \$2.9 million. The Audit Division recommended this amount must be repaid to the U.S. Treasury. The Office of General Counsel fully concurred with this recommendation.

In discussing this finding, our colleagues argued that because of the general redesignation language at 11 C.F.R. \$ 110.1 and the fact that the Committee had received redesignations from many of the contributors, that we should recognize the "contributors' intent" and allow the Committee to transfer the funds to the GELAC.

We believe their analysis is faulty in that it fails to take into account the specific language of the regulations concerning outstanding debts from a Presidential primary at \$\$ 9003.3(a)(1)(iii) and 9034.1(b).

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However, our colleagues' and the Committee's argument went even farther than simple redesignation. They argued that these contributions were not specifically designated for the primary in the first place but were intended for the GELAC despite the fact that some of these contributions were solicited by the Primary Committee to retire primary debt; and all specifically indicated on the solicitation that the contributions were matchable; and the checks were made to the order of the Primary Committee and were deposited in a Primary Committee account.

The result of the Commission's failure to approve Audit's recommendation left us in the impossible position of accepting the Committee's argument that contributions deposited after the convention were not primary contributions, but rather were undesignated contributions received after the primary election, and pursuant to 11 C.F.R. 110.1 were automatically general election contributions. This apparently holds true despite the fact that contributions received as part of the same solicitations were in fact deposited by the Primary Committee and matched with public funds!

Following the 3-3 split on the Audit's recommendation, which had the effect of calling these funds contributions for the GELAC, the General Counsel and Audit Division recommended that the funds received after the DOI that were matched should be declared ineligible for matching because (as our colleagues had just argued) they too were not designated for the primary. This recommendation was made because the contributions transferred by the Clinton Committee to the GELAC and the contributions that were retained by the primary committee and submitted for matching were indistinguishable in every way: they were solicited by the same mailing, mailed to the same address, made payable to the same committee and received at the same time. This motion recognized that if some of these contributions were not designated for the primary, then none ! were. Accordingly, the Committee would have had to make a repayment of the amount that was mismatched with public funds. Incredibly, this motion also failed on a 3-3 partisan split.

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And so the Committee has it both ways. Contributions the Committee received after the convention were considered primary contributions that were matched with public funds used to pay primary debts, while other contributions also received after the convention from the same solicitations were considered undesignated or redesignated to the GELAC -- all at the whim of the Committee.

We see no legal or logical way that these post convention contributions can be both matchable primary contributions and at the Committee's discretion also be undesignated contributions to the GELAC. Such a scheme allowed the Clinton Committee to manipulate its cash balance and debts to receive public money to which it was not entitled. In its 19 year history, the Commission has never tolerated such a result. The Commission's failure to demand repayment of this public money is inconsistent with Commission precedent and squarely at odds with the plain language of the statute and regulations, is arbitrary and capricous, and contrary to law. Failure to approve either of the two motions completely undermines the integrity of the Presidential Public Funding system and will place this agency in an untenable position in trying to enforce the law in future elections.

#### III. The Clinton Committee's Real Entitlement to Public Money.

In their Statement of Reasons, Commissioners McGarry, McDonald and Thomas make the extraordinary statement that their votes to block repayment actually "furthers the public financing concept" (emphasis in original) because it pumps more taxpayer money into the Clinton campaign than the rules allow. Their argument is that if public financing is good, then more public financing must be better. This philosophy, of course, turns Congress' limited public financing statutes for the primaries and the Commission's audit rules upside down: for in every 'Presidential audit, until this one, the Commission has sought to protect taxpayer funds by requiring Committees prove they were fully entitled to the matching funds they received.

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We believe that, at a minimum, Congress should be consulted before the Commission turns a conditional grant of public funds into a flat entitlement for maximum financing. Furthermore, such a drastic change of course should be subject to the notice and comment and other protections of a rulemaking. Finally, it is grossly improper to adopt such a free-spending standard for only one candidate (the current President of the United States), while every other campaign in the same cycle has been held to a different and stricter rule. Such a singular and capricious result is inappropriate and does not "further" the concept of public financing. Instead, it destroys the public's confidence that its money will be audited in a non-partisan manner and the rules scrupulously followed when it is given to any presidential campaign.

Joan D. Aikens
Commissioner

Accember 49, 1994

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Lee Ann Elliott

Commissioner

December 29'54

Trevor Potter

Chairman

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### PEDERAL ELECTION COMMISSION 999 E Street, N.W. Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

**MUR 4192** STAFF MEMBERS

Andre G. Pineda Peter Blumberg

Alan Gottlieb COMPLAINANTS:

Michael A. Siegel

Todd Herman

Joseph P. Tartaro

Second Amendment Foundation

Center for the Defense of Free Enterprise

American Political Action Committee

RESPONDENTS:

William J. Clinton

Clinton for President Committee, and J.L. "Skip" Rutherford, as Treasurer

Clinton-Gore '92 General Election Compliance Fund,

and J.L. "Skip" Rutherford, as Treasurer

#### RELEVANT STATUTES/REGULATIONS:

2 U.S.C. \$ 434(b)(3)(A)

2 U.S.C. §§ 437g(a)(1) and (5)(B)

26 U.S.C. \$\$ 9034, 9037 and 9038 26 U.S.C. \$ 9041 11 C.P.R. \$ 104.14(a) and (d) 11 C.F.R. \$ 110.1(b)(4)(i)-(iii)

11 C.P.R. \$5 111.4(a) and (d)(1)-(4)

11 C.F.R. §§ 9003.3(a)(1)(i) and (iii)

11 C.F.R. § 9032.1(c)

11 C.F.R. \$ 9034.1

11 C.F.R. \$\$ 9034.5(a)(1) and (2) 11 C.F.R. \$ 9037

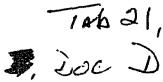
11 C.F.R. § 9038.1

11 C.F.R. \$\$ 9038.2(b)(i) and (iii)

11 C.F.R. §§ 9038.2(c)(2)-(4) and 9038.2(h)

FEDERAL AGENCIES CHECKED: None

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#### I. GENERATION OF MATTER

This matter was generated by a complaint filed by Alan Gottlieb, Michael A. Siegel, Todd Herman, Joseph P. Tartaro, the Second Amendment Foundation, the Center for the Defense of Free Enterprise, and the American Political Action Committee ("the Complainants") alleging that President William J. Clinton and his authorized committees for the 1992 presidential election, Clinton for President and Clinton/Gore '92 General Election Legal and Compliance Fund ("the Respondents"), violated the public financing provisions. Attachment 1.

The Clinton for President Committee ("the Primary Committee") is the authorized committee of President Clinton for his campaign for the Democratic nomination in the 1992 Presidential elections. The Primary Committee received \$12,536,135 in public funds for the purpose of President Clinton seeking the 1992 Democratic Party nomination. Pursuant to 26 U.S.C. § 9038(a) and 11 C.F.R. § 9038.1(a)(1), the Commission conducted an audit and examination of the Primary Committee's receipts, disbursements and qualified

<sup>1/</sup> The Committee registered with the Commission as the Clinton Exploratory Committee on August 21, 1991. On October 10, 1991, the Committee filed an amended Statement of Organization to change its name to the Clinton for President Committee.

campaign expenses. On December 27, 1994, the Commission approved the Final Audit Report on the Primary Committee. $\frac{2}{}$ 

The Clinton/Gore '92 Committee ("the General Election Committee") is the authorized committee of President Clinton and Vice-President Albert Gore. The General Election Committee received \$55,240,000 in public funds for the purpose of electing President Clinton and Albert Gore to the offices of President and Vice President, respectively, of the United States. The Clinton-Gore '92 General Election Compliance Fund ("Compliance Fund or GELAC") is the authorized general election legal and accounting compliance fund for the General Election Committee. Pursuant to 26 U.S.C. § 9007(a) and 11 C.P.R. § 9007.1(a)(1), the Commission conducted an audit and examination of receipts, disbursements, and qualified campaign expenses of the General Election Committee and the Compliance Fund. On December 27, 1994,

On February 13, 1995, the Commission made a final determination that President Clinton and the Primary Committee must repay \$1,342,728 to the United States Treasury. On this same date, the Commission also made a final determination that President Clinton and the Primary Committee must pay \$40,859 to the United States Treasury for stale-dated checks. On January 30, 1995, President Clinton and the Primary Committee submitted a \$1,383,587 check made payable to the United States Treasury. This check represented the full amount owed to the United States Treasury.

<sup>3/</sup> The General Election Committee registered with the Commission on July 17, 1992.

<sup>4/</sup> The Compliance Fund registered with the Commission on May 26. 1992.

the Commission approved the Final Audit Report on the General Election Committee and the Compliance Fund.  $\frac{5}{}$ 

#### II. PACTUAL AND LEGAL ANALYSIS

#### A. Final Audit Report

The proposed Final Audit Report on the Primary Committee presented to the Commission by the Audit Division noted that as of July 15, 1992, the candidate's date of ineligibility, the Primary Committee had net outstanding campaign obligations totaling \$7,878,678. Attachment 3 at 95. However, between July 16, 1992 and September 2, 1992, the Primary Committee received contributions totaling \$5,275,920. Id. Of this amount, the Primary Committee transferred \$1,419,153 to the Compliance Fund. 6/
Id. at 86. The proposed Final Audit Report concluded that the majority of the transferred contributions were designated for the Primary Committee, rather than the General Election Committee,

On June 1, 1995, the Commission made a final determination that President Clinton and the General Election Committee must repay \$84,421 to the United States Treasury. Clinton-Gore '92 Statement of Reasons supporting the Pinal Repayment Determination. On this same date, the Commission also made a final determination that President Clinton and the General Election Committee must pay \$24,640 to the United States Treasury for stale-dated checks. Id. On January 30, 1995, President Clinton and the General Election Committee submitted a \$109,061 check made payable to the United States Treasury. This check represented the full amount owed to the United States Treasury.

The Audit Division did not consider \$1,025,404 in private contributions that were transferred to the Compliance Fund after September 2, 1992. This is the date that the Audit Division calculated as the Committee no longer having net outstanding campaign obligations. Attachment 3 at 86. Therefore, the Committee was no longer entitled to matching payments. 11 C.F.R. § 9034.1(b).

because such contributions were solicited, made payable to, received, deposited, and reported by the Primary Committee. 1d. at 90.

The Primary Committee received matching fund payments of \$1,431,599, \$1,786,327, and \$2,825,181 on August 4, 1992, September 2, 1992 and October 2, 1992, respectively. Id. at 95. By transferring \$1,419,153 to the Compliance Fund, the Primary Committee received additional matching fund payments because the Primary Committee's Statement of Net Outstanding Campaign Obligations ("NOCO Statement") continued to show net outstanding campaign obligations. Id. at 87-95. Therefore, the Final Audit Report presented to the Commission by the Audit Division concluded that the Primary Committee received \$3,440,349 [(\$5,275,920 + \$1,431,599 + \$1,786,327 + \$2,825,181) - \$7,878,678] in excess of (the candidate's entitlement.

The proposed Final Audit Report recommended that the Commission make an initial determination that the Committee repay

The Final Audit Report noted that the Primary Committee's final matching fund submission contained contributions deposited through August 5, 1992. Attachment 3 at 91. The Primary Committee transferred monies to the Compliance Fund from contributions that were deposited on or after August 6, 1992. Id. Therefore, the Audit Division sampled contributions from the final matching fund submission and compared them with those contributions that were designated as Compliance Fund contributions to determine whether these contribution checks had different payee or election designation information. Id. The Audit Division noted no difference. Id.

\$3,440,349 to the United States Treasury. A motion supporting the Audit Division's recommendation failed by a three to three vote. Id. The Commission cannot take any action under the Presidential Primary Matching Payment Account Act unless it has the affirmative vote of 4 members. 2 U.S.C. \$437c(c). Therefore, the Commission was unable to make an initial determination that the Committee repay \$3,440,349 [(\$5,275,920 + \$1,431,599 + \$1,786,327 + \$2,825,181) - \$7,878,678] to the United States Treasury for receiving funds in excess of its entitlement.

#### B. Complaint and Response

The Complainants assert that "President Clinton engaged in a scheme to enhance the resources available for the promotion of his candidacy in the 1992 general election" and that the Primary Committee "manipulated its post-convention cash balance and debts in order to receive public matching funds to which (President) Clinton was not entitled and were used in the general election by the (Compliance Fund)." Attachment 1 at 3. The Complainants

B/ During the Commission's consideration of the proposed Final Audit Report, the Commission decreased the amount of non-qualified campaign expenses for the primary that was paid to benefit the general election. Attachment 3 at 68. This results in a \$424,602 increase in the Committee's matching fund entitlement and a corresponding decrease in the recommended repayment. Attachment 3 at 95. Therefore, the adjusted repayment amount recommended by the Audit Division would have been \$3,015,747 (\$3,440,349 - \$424,602).

A second motion to consider all post date of ineligibility contributions unmatchable unless specifically designated for the primary election also failed by a three to three vote. Attachment 3 at 96.

contend that the Respondents' actions violated 26 U.S.C. §§ 9034 and 9037 and 11 C.F.R. § 9003.3(a)(1)(iii)(A) and (D). The Complainants raise three points in support of their allegations.

First, the Complainants contend that between July 16, 1992 and October 2, 1992, the Primary Committee submitted matching fund requests for over \$6 million, which it asserts were granted by the Commission based on the accuracy of the Committee's NOCO Statement. Id. The Complainants claim that the Primary Committee deposited private contributions in excess of \$5.8 million between July 16, 1992 and October 2, 1992. Id. at 5. However, the Complainants allege that the Primary Committee transferred \$2.4 million of these contributions to the Compliance Fund rather than applying these contributions to reduce the debts remaining after the candidate's date of ineligibility. Id.

Second, the Complainants claim that the Primary Committee received funds which it was not entitled to receive. By transferring such monies to the Compliance Fund, the Complainants state this action "had the effect of skewing the . . 'NOCO' which is the basis for receiving public funds to retire the [primary] campaign debt." Id. at 5. The Complainants argue that the "respondent's actions to inflate the NOCO by divert[ing] post convention contributions from use in retiring primary election debt in order to receive close to \$3 million in public funds to which Clinton was not entitled violates the Presidential Matching Funds Act, 26 U.S.C. section[s] 9034 and 9037 and are an illegal

violation of 11 C.F.R. section(s) 9003.3(a)(1)(iii)(A) and (D)."

Id.

Third, the Complainants contend that the Primary Committee violated the public financing provisions by having certain contributions matched after the date of ineligibility that should not have been matched. The Complainants note that the contributions transferred to the GELAC were received by the Primary Committee in response to primary solicitations. Id. at 5-6. The Complainants assert that these contributions are similar to the contributions that were submitted for matching by the Primary Committee after the date of ineligibility. Id. Therefore, the Complainants argue that if the contributions transferred to the GELAC were not designated for the Primary Committee (but actually intended for the GELAC), then similarly designated contributions received after the date of ineligibility should not have been matched for public funds. Id. Complainants contend that "the act of making a submission for matching funds based upon non-matchable contributions is a violation of 26 U.S.C. section[s] 9034 and 9037.\* Id. at 6.

The Complainants contend that because "the respondents committed knowing and willful violations of the Presidential Primary Matching Payment Account Act, the Commission should impose pursuant to 2 U.S.C. § 437g(a)(5)(B) a penalty in an amount equal to 200% of the contributions and expenditures in violation or \$5.8 million." Id. at 7.

The Respondents assert that the Commission should dismiss the complaint because it fails to "'describe a violation of a statute or regulations' as required under 11 C.F.R. \$ 111.4(d)(3)." Attachment 2 at 1. The Respondents claim that the receipt of funds in excess of a candidate's entitlement is a repayment matter rather than a violation of the Federal Election Campaign Act of 1971, as amended, ("FECA") or the Presidential Primary Matching Payment Account Act. Id. at 1-4. The Respondents argue that the Commission did not make a repayment determination on this matter in the audit and repayment context and that "a retroactive finding of receipt of funds in excess of entitlement has never been treated as a violation of anything and [they] fail to see what provision would be violated." Id. at 4. The Respondents assert that "while there are certainly some Title 26 repayment matters that may also be the subject of a Title 2 enforcement action, this is not such a case . . . There was no excessive spending (by the Committee], nor was there any excessive contribution received [by the Committee]. Id.

The Respondents contend that the complainants are estopped from pursuing their complaint based on res judicata and collateral estoppel principles. Id. Specifically, the Respondents claim that because the complaint arises from the Commission's repayment matters, the Commission has already addressed these matters in the audit and repayment context. Id. Therefore, the Respondents assert that because no repayment was due to the United States Treasury stemming from the receipt of public funds in excess of

its entitlement, no violation of this provision could have occurred. Id.

Finally, the Respondents argue that the transfer of \$2,444,557 from the Primary Committee to the GELAC was a permissible and proper transfer because the contributions were intended for the GELAC. Id. at 5. Specifically, the Respondents assert that these contributions "were undesignated in accordance with 11 C.F.R. § 110.1(b)(2) and, therefore, were intended for the next election." Id. The Respondents further assert that the contributions in question were not received in response to primary solicitations, and that contributions transferred to GELAC were distinguishable from those submitted for matching. Id. at 1. The Respondents assert that even though its vendor processed these contributions as "redesignations," such contributions were not "redesignations." Id. at 7.

#### C. Legal Framework

Every candidate who has been notified by the Commission that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments under 26 U.S.C. § 9037 and 11 C.F.R. § 9037. 26 U.S.C. § 9034(a) and 11 C.F.R. § 9034.1(a). During the candidate's period of eligibility, the candidate is entitled to receive public funds to the extent that he or she receives matchable contributions. 10/11 C.F.R.

<sup>10/</sup> The total amount of payments to which a candidate is entitled to receive shall not exceed 50 percent of the expenditure limitation applicable under 2 U.S.C. § 441a(b)(1)(A). 26 U.S.C. § 9034(b) and 11 C.F.R. § 9034.1(d).

\$ 9034.1(a). However, after the candidate's date of eligibility, the candidate is only entitled to public funds for matchable contributions if on the date of ineligibility, the candidate has net outstanding campaign obligations. 11/11 C.F.R. \$ 9034.1(b). Net outstanding campaign obligations are the difference between the total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility plus estimated necessary winding down costs, less cash on hand as of the close of business on the last day of eligibility, including all contributions dated on or before that date whether or not submitted for matching. 11 C.F.R. \$ 9034.5(a)(1) and (2).

Within 15 days after the candidate's date of ineligibility, the candidate shall submit a NOCO Statement. 11 C.F.R. \$ 9034.5(a). The NOCO Statement will reflect the candidate's financial status as of the date of ineligibility and it will show whether the candidate has net outstanding campaign obligations. Explanation and Justification for Regulations on Presidential Primary Matching Funds, 46 Fed. Reg. 5229 (Feb. 4, 1983).

Each treasurer of a political committee shall file reports of receipts and disbursements and sign such reports. 2 U.S.C. § 434(a)(1). Each individual having the responsibility to file a required report or statement shall also sign the original report or statement. 11 C.F.R. § 104.14(a). Each treasurer of a

 $<sup>\</sup>frac{11}{\text{received}}$  A candidate must repay the amount of public funds that are received in excess of the amount needed to satisfy the net outstanding campaign obligations. 26 U.S.C. § 9038(b)(1) and 11 C.F.R. § 9038.2(b)(1)(i).

political committee, and any other person required to file any report or statement under the Commission's regulations and under the Act shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 C.P.R. \$ 104.14(d). Such reports and statements include NOCO Statements. Explanation and Justification for Regulations on Presidential Primary Matching Funds, 52 Fed. Reg. 20670 (June 3, 1987).

In order to be eligible to receive public funds for the general election, a major party candidate must certify to the Commission that he or she will not accept private contributions to defray qualified campaign expenses. 26 U.S.C. \$ 9003(b)(2). However, a major party candidate may establish a legal and accounting compliance fund and accept private contributions into the fund if such contributions are received and disbursed in accordance with 11 C.F.R. \$ 9003.3. 11 C.F.R. \$ 9003.3(a)(1)(i). Pursuant to 11 C.F.R. \$ 9003.3(a)(1)(ii), private contributions received during the matching payment period that are remaining in the primary committee's accounts, which are in excess of any

<sup>12/</sup> The Notice of Proposed Rulemaking for revisions to the public financing regulations "included a sentence in paragraph (a) of [section 9034.5] requiring treasurers to sign all statements of net outstanding campaign obligations ("NOCO Statements"). This sentence was removed from the final regulations as unnecessary since treasurers are required to sign all reports and statements filed with the Commission under 11 C.F.R. \$ 104.14." 52 Fed. Reg. 20670 (June 3, 1987). Therefore, NOCO Statements are included as reports and statements which a treasurer must sign.

amount needed to pay primary expenses or repay the Presidential Primary Matching Payment Account, may be transferred to the legal and accounting compliance fund without regard to contribution limitations. 13/ However, contributions that are made after the beginning of the expenditure report period and are designated for the primary, but which exceed the contribution limitation for the primary, may be transferred to or deposited in the legal and accounting compliance fund if the candidate obtains the contributor's redesignation in accordance with 11 C.F.R. \$ 110.1. $\frac{14}{}$ 11 C.F.R. § 9003.3(a)(1)(iii). Pursuant to 11 C.F.R. 5 110.1(b)(4)(i)-(iii), a contribution shall be considered to be designated in writing for a particular election if: (1) the contribution is made by check, money order, or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made; (2) the contribution is accompanied by a writing, signed by the contributor, which clearly indicates the particular election with respect to which the contribution is made; or (3) the contribution is redesignated in accordance with 11 C.F.R. \$ 110.1(b)(5).

<sup>13/</sup> The matching payment period for candidates seeking the nomination of a party which nominates its Presidential candidate at a national convention begins "January 1 of the calendar year in which a Presidential general election is held" and it ends "the date on which the party nominates its candidate." 11 C.F.R. § 9032.6.

<sup>14/</sup> In the case of a major party candidate, the expenditure report period begins on September 1 before the general election or the date major party chooses its nominee and the period ends 30 days after the general election. 11 C.F.R. § 9002.12(a).

Contributions that do not exceed the contributor's limit for the primary may be redesignated and deposited in a legal and accounting compliance fund only if: (1) the contributions represent funds in excess of any amount needed to pay remaining primary expenses; (2) the redesignations are received within 60 days of the treasurer's receipt of the contributions; (3) the requirements of redesignations rules have been satisfied; and (4) the contributions have not been submitted for matching. 11 C.F.R. \$ 9003.3(a)(1)(iii)(A)-(D).

#### D. Discussion

The Complainants contend that the Respondents violated the public financing provisions by: (1) transferring funds to the GELAC when primary debts were remaining and (2) receiving funds in excess of entitlement after the candidate's date of ineligibility; or (3) submitting matching contributions to the Commission after the candidate's date of ineligibility that should not have been matched. The Office of General Counsel agrees with the Complainants' first point. However, the Complainants' second point stems from the passive acceptance of public funds after the date of ineligibility. The third point is merely an alternative to the second point which assumes that the private contributions received after the date of ineligibility were not designated for the Primary Committee. This Office believes that the focus of this enforcement action should be on the affirmative act of submitting a misleading NOCO Statement of the Commission.

As of July 15, 1992, the candidate's date of ineligibility. the Primary Committee had a deficit of \$8,303,280. Attachment 3 at 96. Therefore, the Primary Committee was required to pay its primary expenses before it could transfer or redesignate any private contributions to the Compliance Fund.  $\frac{15}{}$  11 C.F.R. \$\$ 9003.3(a)(1)(iii); see also, 11 C.F.R. \$ 9034.1(b). The transfer of \$1,419,153 from the Primary Committee to the Compliance Fund was not in accordance with 11 C.F.R. § 9003.3(A)(1)(iii) because such contributions were primary contributions which the Primary Committee should have applied towards the reduction of its primary expenses. The Respondents claim that the transfer was permissible. The Respondents contend that the contributions were originally intended for the Compliance Fund, and, therefore, the Primary Committee was not required to satisfy its primary debts before the funds were provided to the Compliance Fund.

The determination of whether a contribution is designated for a particular election turns on the contributor's donative intent.

See Advisory Opinion ("AO") 1990-30. In this office's view, the \$1,419,153 in contributions transferred to the Compliance Fund by the Primary Committee were contributions designated to the Primary election since they were made payable to "Clinton for President" or a similar entity, and were solicited, received, deposited and

Pursuant to 11 C.F.R. § 9002.12(a), the expenditure report period for President Clinton began on July 15, 1992, the date he was nominated as the 1992 Democratic Party nominee for the Office of President of the United States.

reported by the Primary Committee when it had not outstanding campaign obligations. Attachment 3 at 90; see also, 11 C.F.R. 5 110.1(b)(4)(i). Purther, the Audit Division sampled contributions from the Primary Committee's final matching fund submission with those contributions that were designated as Compliance Fund contributions to determine whether these contribution checks had different payee or election designation information. Attachment 3 at 91. No difference was noted.  $\frac{16}{10}$ Therefore, it is the view of this office that the contribution checks demonstrate that the contributors intended to give the contributions to the Primary Committee. Thus, the Office of General Counsel recommends that the Commission find reason to believe that the Clinton for President Committee, its treasurer, J.L. "Skip" Rutherford, William J. Clinton, the Clinton-Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as Treasurer, violated 11 C.F.R. \$ 9003.3(a)(1).

The Primary Committee cannot apply the GELAC transfer and designation rules in a manner that will allow it to arbitrarily claim that certain contributions are matchable primary contributions 17/ and reverse its position to increase its

<sup>16/</sup> Although the Respondents contend that "the [a]uditors' contention that the funds transferred to GELAC are indistinguishable from those funds submitted for matching from July 17 to August 5 is factually inaccurate," they provide no basis for this assertion. See Attachment 2, note 1.

<sup>17/</sup> The Respondents assert that "only those contributions received after the debt which specifically have "primary" or "primary debt" written on the check . . . should be treated as primary contributions." Attachment 2 at 6. Contrary to these

entitlement to public funds by claiming that similarly designated contributions are intended for the GELAC. 18/By transferring \$1,419,153 to the Compliance Fund rather than applying private contributions towards its remaining primary expenses, the Primary Committee received \$3,015,747 [(\$5,275,920 + \$1,431,599 + \$1,786,327 + \$2,825,181) - \$8,303,280] in matching funds that it was not entitled to receive. Attachment 3 at 87-96.

The Primary Committee received these public funds only

because its NOCO Statements reflected net outstanding campaign

obligations. Attachment 4, see also, 11 C.F.R. \$ 9034.1(b).

Therefore, the Primary Committee, its Treasurer, and the candidate

had a duty to submit NOCO Statements that accurately reflected the

Committee's outstanding obligations and assets. 19/ See 11 C.F.R.

\$ 104.14(d). The duty to submit NOCO Statements that are as

<sup>(</sup>Footnote 17 continued from previous page) assertions, 11 C.F.R. § 110.1(b)(4)(i) does not require the words "primary" or "primary debt" to appear on a check for such a contribution to be designated for a primary election.

The Respondents assert that a reason to believe finding by the Commission would result in disparate treatment of incumbents and challengers. Attachment 2 at 8. Specifically, the Respondents assert that "because incumbents often use a similar name for both primary committees and GELAC committees, checks made payable to them often have identical names . . . this gives them a great deal of discretion as to how to attribute contributions." Id. Although this Office recognizes that incumbent office holders often have similar names for their primary and GELAC committees, nothing prohibits challengers from doing the same.

pursuant to 11 C.F.R. § 9034.5(a), the candidate and committee are required to file the NOCO Statement. See 11 C.F.R. § 9032.1(c). The treasurer also has a duty to file the NOCO Statement. 11 C.F.R. § 104.14(a).

accurate as possible is important to the public financing system. The significance of this process is demonstrated by the fact that the payment of public funds based on NOCO statements is the only area of public financing where the Commission may temporarily suspend the payment of public funds, prior to an audit and examination, to avoid an overpayment. 20/ 11 C.F.R. \$ 9034.5(g)(1).

The Primary Committee submitted its NOCO Statements reflecting net outstanding campaign obligations for which it should have used the private contributions to satisfy. See 11 C.F.R. \$ 9034.1(b). The private contributions that were ultimately transferred to the Compliance Fund were available to the Primary Committee. However, the Primary Committee did not apply the private contributions to the primary debt and, therefore, it submitted NOCO Statements that were an inaccurate picture of the candidate's financial status. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Clinton for President Committee, and J.L. "Skip" Rutherford, as Treasurer, and William J. Clinton violated 11 C.F.R. \$\$ 104.14(d) and 9034.5(a).

The Respondents argue that a candidate's receipt of matching funds in excess of his entitlement is a repayment matter that may not also be the subject of an enforcement action. Hence, the

<sup>20/</sup> In other situations where the candidate receives funds in excess of entitlement, the Commission will have already certified the funds and will only seek redress after the audit and examination has been completed. 11 C.F.R. \$\$ 9038.2(b)(1)(ii) and (iv).

Respondents argue that no enforcement action can be taken against the Committee for the receipt of matching funds which exceed the amount that a candidate is entitled to receive. See 26 U.S.C. \$ 9038(b)(1) and 11 C.F.R. \$ 9038.2(b)(1). However, the violation in this matter does not involve the act of receiving the public funds, but the act of submitting misleading NOCO Statements to the Commission. Furthermore, the Commission is not precluded from pursuing an enforcement action arising from violations of the public financing provisions that require repayments to the United States Treasury. Reagan Bush Committee v. FEC, 525 F. Supp. 1330, 1337 (D.D.C. 1981). For example, the Commission may pursue a Committee for incurring expenses in excess of the state and overall expenditure limitations. 2 U.S.C. \$ 441a(b)(1)(A).

Contrary to the Respondent's assertions, the Commission's failure to make a repayment determination does not preclude the Commission from acting upon the complaint based on res judicata and collateral estoppel principles. See Attachment 2, p. 4. Office recognizes the difficulty presented in pursuing this matter given the outcome in the repayment context. See MUR 3708 (Following a court order, the Commission pursued enforcement action against committee after the Commission was unable to approve an advisory opinion sought by the committee). However, the Commission failed to reach a decision on the repayment recommendation on a 3-3 vote. Thus, there is no binding determination that would preclude a Commission decision in this matter. In any event, the repayment process and enforcement process involve separate and distinct procedures. 2 U.S.C. \$ 437g(a) and 26 U.S.C. \$ 9038(b); see Reagan Bush Committee v. FEC, 525 F. Supp. 1330, 1337 (D.D.C. 1981). Therefore, by statutory design, a Commission decision to pursue an enforcement action is not precluded by its decision not to seek a repayment based upon the same facts. The analysis in this report is consistent with the analysis contained in this Office's comments on the proposed Final Audit Report for the Committee which contained the initial repayment determination. Comments on the Final Audit Report on the Clinton for President Committee, dated November 3, 1994.

However, exceeding the expenditure limitation is also a basis for repayment. 11 C.F.R. § 9038.3(b)(2)(ii)(A). As long as the public financing provision is similar to the act of exceeding the expenditure limitation, the Commission may pursue an enforcement action for apparent violations of the provision. The requirements that the Committee incur expenses within a limitation and submit accurate NOCO Statements are similar in that they both place an affirmative duty on the Committee.

III. Discussion of Conciliation and Civil Penalty

### RECOMMENDATIONS

- 1. Find reason to believe that the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, the Clinton-Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as treasurer, and William J. Clinton violated 11 C.F.R. \$ 9003.3(a)(1);
- Find reason to believe that the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, and William J. Clinton violated 11 C.F.R. \$\$ 104.14(d) and 9034.5(a);
- 3. Enter into conciliation with the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, the Clinton-Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as treasurer, and William J. Clinton prior to a finding of probable cause to believe;
- 4. Approve the attached proposed Conciliation Agreement;

5. Approve the appropriate letters

Date

General Counsel

#### Attachments:

- 1. Complaint dated March 9, 1995
- 2. Respondents' response to complaint dated April 24, 1995
- 3. Final Audit Report on Clinton for President Committee approved by the Commission on December 27, 1995
- 4. Primary Committee NOCO submissions
- 5. Proposed Conciliation Agreement for President Clinton and the Clinton for President Committee
- 6. Proposed Conciliation Agreement for Clinton-Gore '92 General Election Compliance Fund
- 7. Proposed Factual and Legal Analysis for President Clinton, the Clinton for President Committee
- 8. Proposed Factual and Legal Analysis for the Clinton-Gore '92 General Election Compliance Fund



### FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Republican Commiss. nees

### BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

William J. Clinton
Clinton for President Committee
J.L. "Skip" Rutherford, as Treasurer
Clinton-Gore '92 General Election
Compliance Fund
J.L. "Skip" Rutherford, as Treasurer

MUR 4192

#### STATEMENT OF REASONS

Commissioner Joan D. Aikens Commissioner Lee Ann Elliott Commissioner Trevor Potter

On August 15, 1995, the Commission declined by a vote of 3-3 to find reason to believe that the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, the Clinton-Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as treasurer, and William J. Clinton violated 11 C.F.R. § 9003.3(a)(1). The Commission also declined by a vote of 3-3 to find reason to believe that the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, and William J. Clinton violated 11 C.F.R. §§ 104.14(d) and 9034.5(a). These violations involve improper transfer of contributions from the Primary Committee to the Compliance Fund, and the submission of misleading Statement of Net Outstanding Campaign Obligations ("NOCO Statements") inaccurately reflecting the Committee's outstanding obligations.

By way of background, on December 15, 1994, the Commission considered almost identical issues with regard to the proposed Final Audit Report on the Primary Committee. In that Report, the Audit Division noted that as of July 15, 1992, the candidate's date of ineligibility, the Primary Committee had net outstanding

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TABOL E

campaign obligations totaling \$7,878,678. Between July 16, 1992 and September 2, 1992, the Primary Committee received contributions totaling \$5,275,920, and transferred \$1,419,153 of this amount to the Compliance Fund. The Primary Committee received matching fund payments of \$1,431,599, \$1,786,327, and \$2,825,181, on August 4, 1992, September 2, 1992 and October 2, 1992, respectively. Therefore, the Report concluded that the Primary Committee received \$3,440,349 [(\$5,275,920 + \$1,431,599 + \$1,786,327 + \$2,825,181) - \$7,878,678] in excess of the candidate's entitlement, and recommended that the Commission make an initial determination that the Committee repay \$3,440,349 to the United States Treasury.

A motion supporting the Audit Division's recommendation for the Final Audit Report failed by a 3-3 vote. A second motion to consider all post date of ineligibility contributions unmatchable unless specifically designated for the primary election also failed by a 3-3 vote. Timely Statements of Reasons were written by both the declining and supporting Commissioners addressing the reasons for the vote.

Because the recommendations at the enforcement phase upon which the Commission split 3-3 are virtually identical to the recommendation in the proposed Final Audit Report that the Commission split 3-3, we hereby adopt the Statement of Reasons we wrote concerning the proposed Final Audit Report. That Statement of Reasons was signed by the undersigned Commissioners on December 29, 1994, and is found at Attachment A. The Statement of Reasons written by the declining Commissioners concerning the proposed Final Audit Report is dated December 16, 1994, and is found at Attachment B because it is referred to in our Statement of Reasons in Attachment A.

9.20-95

Date

9-19-95

9-19-95 Date Joan D. autress

Joan D. Aikens Commissioner

Lee Ann Elliott Commissioner

Trevor Potter Commissioner

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# 20007 • Vol. 1, No. 5 • March 1995 1150) (Singly VIV Suite 105, Washington, D.C

ONCE A POLITICAL SPENDTHRIFT... OLD DEMOC-RATIC TRADITIONS ARE HARD TO BREAK... SO BILL CLINTON SHOULDN'T BE UPSET AT A LITTLE CAM-PAIGN DEBT...

While his administration is doling out taxpa

or pulrageous social welfare projects like midnig ketball at record levels, the President is leighing shock that his campaign and his party are caught in a cash crunch complete with stinky innuendoes of Clinton's alleged extramarital sexcapades.

Federal auditors say President Clinton improperly took and virtually wasted \$4 million in federal matching funds for his 1992 Presidential campaign.

The list of particulars cited by the Feds is the stuff abloid headlines scream for. Claims of "improper staff bonuses" of up to \$52,000 are alleged. Improper "in and donations of office space by Wall Street brokers. Goldman Sachs, and others. And, a juicy \$37,500 paymentito an "unnamed consultant" the Clinton campaign

ctuses to disclose.
Lawyers for the Clinton campaign acknowledge only the latter amount was paid into an escrow account held by Arkansas attorney, Kathlyn Graves. Graves

has done legal work on the Paula Jones sexual harassment case, a fact that conjure smirks

about the alleged bimbo-control brigade that supposedly kept Clinton playmates mum prior to his election.

What truly troubles the President, however, is the record debt incurred by the Democratic party dur-

ing November's mid-term elections. the roughly \$5 million debt is more than

rive times the remaining party debt in any mid-term election for the past decade. So why is he Sipset? We thought deficit spending was part of the Democratic Party's Initiation ceremony.

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# Political Finance Lobby Reporter

VOLUME XV, NO. 24

December 28, 1994

# Post-election reports point to new records

Congressional candidates raised \$89.5 million and spent \$139.3 million during the final days leading up to and beyond the November 8 general election, according to the Federal Election Commission's tabulation of post-election disclosure reports.

The reports submitted by all candidates covered financial activity during a period that began 20 days before and ended 20 days after the election which put Republicans in control of the House and Senate.

As of November 28, the general election candidates had spent a total of \$589.5 million. This represented an

(Continued on Page 5)

## Looting Treasury!

Clinton's campaign haul is \$3.4 million; FEC Democrats drive getaway car

By Edward Zuckerman Editor & Publisher

Demonstrating loyalty to their party, the Federal Election Commission's Democratic members recently prevented the agency from demanding a \$3.4 million refund of taxpayers' money by the committee that managed Bill Clinton's campaign for their party's 1992 presidential nomination.

Their votes to reject an audit staff recommendation, which was offset by Republican votes that favored it, resulted in a partisan 3-3 deadlock that appeared to defuse a potentially explosive political headache for President Clinton.

"We've never allowed this to happen," Republican Commissioner Joan Aikens said, referring to a manipulation of campaign revenues that have triggered past FEC demands from previous presidential candidates.

Her remark brought a veiled retort. "A lot of decisions that have come out (Continued on Page 3)

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TAB 21

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# FEC deadlock erases potential \$3.4 million payment from Clinton

(From Page 1)

of here have gone beyond me...I'll be happy to supply a list," Democrat Danny Lee McDonald said.

Had the recommendation been approved when the Commission finished reviewing the audit of Clinton's nomination and presidential campaigns at its December 15 meeting, it would have resulted in the biggest repayment demand since the presidential financing program started in 1976.

The Commission approved other audit findings, resulting in approximately \$500,000 worth of repayments by the committees that ran Clinton's nomination and general election campaigns.

Altogether, the Clinton for President Committee collected \$12,536,135 from the U.S. Treasury to defray its primary election, convention and post-campaign "winding down" costs.

After examining the committee's records of an estimated 241,000 contributions and 29,000 disbursements, the FEC's auditors concluded that almost one-fourth of the amount provided by taxpayers shouldn't have been collected.

As they explained in one section of their voluminous report, Clinton's campaign continued to receive a torrential outpouring of contributions after he captured the nomination at the Democratic national convention in New York City.

Most of these post-nomination contributions, totalling \$5,863,410 in all, along with another batch of just-under-the-wire pre-nomination gifts, were submitted to the government for matching fund payments. In all, Clinton's nomination campaign committee received \$6,043,107 in three post-convention installments from the U.S. Treasury.

Clinton's committee had net outstanding debts totalling \$7,588,794 when his campaign for the nomina-

### The FEC rulebook:

§9034.1 Candidate entitlements

- (a) A candidate who has been notified by the Commission that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations.
- (b) If on the date of ineligibility a candidate has net outstanding campaign obligations, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year, provided that on the date of payment there are remaining net outstanding campaign obligations.

tion came to a successful conclusion, the FEC's auditors determined.

Under law and the FEC's regulations, Clinton's committee was required to use its post-convention contributions to extinguish its debts. Had the regulations been followed, the committee would have used its postconvention contributions to reduce its debt by \$5.8 million...and the committee would have been eligible to collect another \$1.7 million to pay its remaining debts and another \$900,000 to cover its post-convention "winding down" costs.

However, after submitting most of the post-convention contributions to the federal government for matching payments, Clinton's campaign managers shunted \$2.4 million into a special holding account. Instead of using (Continued on Page 4)

### Taxpayers won't pay for sex case settlement

While the question might be dealt with later, the Federal Election Commission has decided for the time being that a presidential campaign committee's payment to settle a sexual harassment complaint is not an appropriate use of taxpayer's money.

So, the FEC ordered Bill Clinton's primary election committee to refund the taxpayer-funded portion of a \$37,500 payment that was made for that purpose. Since he collected 25.8% of his total primary campaign funds from the U.S. Treasury, the repayment works out to about \$9,675.

Because federal law requires that campaign contributions be used only for election-related purposes, it could be a subject in a potential enforcement action.

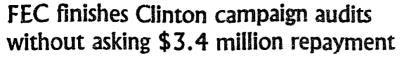
Clinton's campaign did all it could to keep the affair confidential. But a check made payable to an escrow agent with the notation "settlement" drew an FEC auditor's curiosity.

Campaign lawyer Lyn Utrecht confirmed to the Wall Street Journal that the payment was to settle an "employee-related dispute," adding that a confidentiality agreement prevented her from providing further details.

The Wall Street Journal nonetheless reported that the payment settled a sexual harassment charge that an unidentified female campaign worker brought against David Watkins, the campaign's chief of administration.

Watkins held a similar post in the White House until last summer when he was forced to leave following his much-publicized use of a military helicopter for transportation to a golf outing. Watkins is presently employed by Callaway Golf Co. which manufactures the popular "Big Bertha" golf clubs.





(From Page 3)

the money to pay primary election debts, the committee asked contributors to redesignate their gifts so the money could be deposited into yet another account that would be used to pay for legal and accounting services.

Such contribution redesignations are permitted by FEC regulations, but only after a committee extinguishes its debts.

To do otherwise, an FEC auditor explained, "would enable campaigns to maximize their federal entitlement at the expense of taxpayers."

The Commission's Democratic members defended the redesignations, saying most of the contributions didn't specify they were given for primary election purposes. Under the law, they said, when a contribution is received for an election that has been concluded, the gift is presumed to have been made for the next election. But in this case, because Clinton accepted \$55.5 million in taxpayer funds to finance his entire general election under an agreement that precluded the acceptance of any private contributions, there was no place to deposit the post-election contributions other than the Clinton/Gore '92 General Election Compliance Fund, they argued.

But the Commission's Republicans disagreed.

The post-election contributions, Mrs. Aikens said, were "solicited by Clinton's primary campaign committee, were made out to the primary committee and were deposited by the primary committee...to conclude they weren't designated for the primary campaign runs counter to the regula-

tions' definitions."

"What happens next?" she asked after the audit staff's recommendation was stalled by the partisan deadlock.

Audit staff director Robert J. Costa was facing a dilemma. As he noted, three Republicans agreed the contributions were primary election gifts that should have been used to pay debts...and three Democrats contend the money was legally redesignated for Clinton's compliance fund.

"Were the contributions matchable or not?" Costa asked.

If it was legal for Clinton's campaign managers to redesignate the contributions for use by a compliance fund, then wouldn't it follow that they were not primary election gifts? And, if that was the case, wouldn't it also follow that those gifts—\$2.4 million in all—shouldn't have been eligible for matching fund payments?

But another partisan deadlock prevented the Commission from answering those questions, too.



# Political Finance Lobby Reporter

**VOLUME XVI, NO. 1** 

January 11, 1995

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## 'Arbitrary & capricious'

FEC Republicans' statement on Clinton audit is a plea for legal intervention

By Edward Zuckerman Editor & Publisher

After a partisan deadlock prevented the Federal Election Commission from demanding a \$3.4 million refund of taxpayers' money that its staff auditors said should never have been paid to Bill Clinton's presidential campaign, the agency's three Republican members co-authored an extraordinary declaration.

In a "statement of reasons" they signed on December 29, the GOP commissioners decried their Democratic colleagues' action was "arbitrary, capricious and contrary to law." These were carefully chosen words. They are the same ones that prescribe the standard used by federal judges to measure the legality of FEC enforcement actions.

Their underlying intent was obvious: they want someone to haul their agency into court and let a panel of federal circuit court judges, if they agree the action was "arbitrary, capricious and contrary to law," order the FEC to reevaluate its decision.

Under the Presidential Primary Matching Payment Account Act, the FEC's action (or non-action) is subject to judicial review, provided a petition is filed within 30 days at the U.S. Circuit Court of Appeals for the District of Columbia. The vote to reject the audit staff's recommendation was taken December 15; thus, the deadline for seeking judicial review is Saturday, January 14.

(Continued on Page 2)



### FEC deadlock on Clinton audit

(From Page 1)

The issue involves campaign funds which Clinton's campaign obtained from the U.S. Treasury after he won the Democratic party's 1992 presidential nomination.

Private contributions continued flowing to Clinton's campaign after he won the nomination, about \$5.8 million, which should have been used to extinguish his campaign's debts which stood around \$7.0 million, the FEC auditors said. Instead, several million dollars were deposited into a legal and accounting fund, which had the effect of leaving taxpayers to pick up a larger share of Clinton's primary election debts than should have been the case.

Clinton's campaign managers didn't invent the strategy that enabled them to stretch their collection of taxpayer funds. The Commission had seen it before, most recently in its audits of the 1988 presidential campaigns, and voted unanimously to prevent its reoccurrence by issuing a more stringent regulation. The FEC's rule, in effect for 1992, required presidential campaigns to pay their primary election debts before any surplus contributions could be transferred to a compliance fund.

Clinton's campaign lawyers argued—and the Commission's three Democratic members agreed—that the fund transfers were permissible. The transfers involved contributions that didn't specify the donor's intent as to how the money should be used, they claimed. Since the donors hadn't specified how their money was to be used, the Clinton campaign asked them to designate their "undesignated" contributions for use by the Clinton/Gore Compliance Fund.

The Commission's three GOP members—Joan Aikens, Lee Ann Elliott and Trevor Potter—voted to uphold the FEC's regulation by approving the audit staff's key recommendation. But its three Democrats—John Warren McGarry, Danny Lee McDonald and Scott Thomasbalked. At the FEC, four votes are required to sustain a motion.

"The Commission's failure to demand repayment of this public money is inconsistent with Commission precedent and squarely at odds with the plain language of the statute and regulations, is arbitrary and capricious, and contrary to law," the FEC's three Republicans said in their "statement of reasons."

Their statement came nearly two weeks after McGarry, McDonald and Thomas, in their own explanatory statement, said their votes to reject the auditors' recommendation was consistent with the agency's rules. And they suggested their votes upheld the public's interest by providing taxpayers an even greater opportunity to finance a larger share of a presidential campaign.

"What is the impact of our approach?" they asked.
"Taxpayer funds, rather than privately raised dollars, are used to pay primary campaign expenses—a result that furthers the public financing concept. The funds at issue are left available to the GELAC (General Election Legal & Accounting & Compliance Fund) to pay for complying with the many complexities of the law—again a result that furthers the public financing concept because it ensures that candidates continue to opt for public rather than private financing."

The GOP commissioners argued differently: "We see no legal or logical way that these post-convention contributions can be both matchable primary contributions and at the Committee's discretion also be undesignated contributions to the (compliance fund). Such a scheme allowed the Clinton Committee to manipulate its cash balance and debts to receive public money to which it was not entitled."

And they continued: "It is grossly improper to adopt such a free-spending standard for only one candidate (the current President of the United States), while every other campaign in the same cycle has been held to a different and stricter rule."

# Political Finance Lobby Reporter

VOLUME XVI, NO. 6

March 22, 1995

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- 6 New Jersey ELEC seeks biggest fine in history
- 7 How does a state enforcea lobbyist 'gift ban' againsta lobbyist who is also alawmaker?
- 7 McBride is new Common Cause boss
- 10 BT8: Guess who's coming to Spielberg's house for dinner?

# FEC audit report is basis for complaint against Clinton

By Ed Zuckerman, Editor & Publisher

President Clinton's campaign committee should be ordered to pay a \$5.8 million civil penalty for taking too much money from the U.S. Treasury, several conservative organizations and radio talk show hosts said in a formal complaint they filed March 6.

The complaint literally hoisted the Federal Election Commission on its own petard. For evidence of alleged wrongdoing, they merely incorporated the FEC's own legal and audit staff reports on Clinton's taxpayer-funded campaign for the Democratic party's 1992 presidential nomination.

According to the FEC's professional staff investigations, Clinton's campaign ignored regulations that were specifically designed to prevent campaign committees from continuing to draw primary election funds from the U.S. Treasury after winning their party nominations.

Under the regulation, contributions received after winning the nomination are supposed to be used for paying primary election debts. But Clinton's campaign, after submitting some of its post-nomination gifts for matching funds, transferred the money into another account that was used for paying legal and accounting expenses.

(Continued on Page 6)

"Simply stated, Clinton 'cooked the books' of his campaign by diverting contributions that were solicited for the primary election."

--Alan Gottlieb See Page 6

## FEC's audit on Clinton campaign is grist for formal complaint

(From Page 1)

"Instead of applying these funds to extinguish a campaign debt in excess of \$7 million as required by FEC regulations, the Clinton committee intentionally and illegally diverted in excess of \$2.4 million to a legal and accounting fund for the general election. This scheme enabled the Clinton committee to receive \$2.9 million in additional matching funds to which it was not entitled," the complaint said.

The complaint was filed by the Second Amendment Foundation, the Center for the Defense of Free Enterprise and the American PAC. Joining the complaint were: Michael Siegel of Seattle, Wash., and Todd Herman of Spokane, Wash., who are both radio talk show hosts, and Joseph Tartaro of Buffalo, N.Y., who is the editor of Gun Week magazine.

Complainant is an independent spender

Both the Second Amendment Foundation and the Center for the Defense of Free Enterprise are tax-exempt organizations. American PAC, an FEC registered political committee, raised \$304,407 during the 1993-94 election cycle. Its expenditures, totalling \$167,319, included \$57,200 in contributions to 44 Republican congressional candidates and \$15,000 worth of independent expenditures to defeat former House Speaker Tom Foley and former Reps. Jay Inslee and Mike Kreidler, all Washington Democrats.

Last December, with the Commission's three Republican members voting to approve it, the agency's lawyers and auditors recommended that Clinton's campaign be ordered to make a \$2.9 million repayment to the U.S. Treasury.

But the Commission's three Democrats refused to support the auditors' recommendation. They knotted the Commission into a 3-3 deadlock and spared Clinton's campaign committee from having to make a potentially embarrassing expenditure.

"Arbitrary and capricious," the Commission's Republicans hooted in a joint statement that accused their Democratic colleagues of putting politics above principle. Their words comprised a less-than-subtle plea for outside legal intervention.

In a reply "statement of reasons" that was more brazen than explanatory, the Commission's Democrats said their decision had helped advance the concept of taxpayer-funded elections. Allowing Clinton's campaign to collect more money than the FEC's regulations allowed, they said, had the effect of reducing the amount of private money that would have otherwise been needed to pay the committee's lawyers and accountants.

#### Democrats rejoinder

"What is the impact of our approach?" Democrats Danny Lee McDonald, John Warren McGarry and Scott Thomas asked in their joint statement. "Taxpayer funds, rather than privately raised dollars, are used to pay primary campaign expenses—a result that furthers the public financing concept. The funds at issue are left available to the GELAC (General Election Legal & Accounting & Compliance) Fund to pay for complying with the many complexities of the law—again a result that furthers the public financing concept because it ensures that candidates continue to opt for public rather than private financing."

Under the Presidential Primary Matching Payment Account Act, all decisions by the FEC are subject to review by the U.S. Circuit Court of Appeals for the District of Columbia, provided a petitition is filed no later than 30 days following the agency's action.

#### Complaint opens avenue to court

But the Federal Election Campaign Act's formal complaint process, which specifically includes the presidential funding laws, provides a different avenue that could ultimately bring the matter before a federal court. Under the law, the FEC must investigate every valid complaint and make a determination within 120 days. A lawsuit requesting judicial review can be filed if the deadline isn't met.

When Washington election law attorney Richard Mayberry filed the complaint for his clients on March 6, he was already looking ahead to July and the expiration of the 120-day period.

"Making a submission for matching funds based upon nonmatchable contributions is a violation of the Presidential Primary Matching Payment Account Act," Mayberry said in the complaint.

The manipulation of post-nomination contributions to extend the campaign's eligibility for taxpayer funds, the complaint alleged, was a "knowing and willful" violation of the Commission's regulations. Thus, the complaint urged that the Clinton for President Committee be ordered to pay a civil penalty that is 200% of the amount of funds involved in the case.

"Simply stated, Clinton 'cooked the books' of his campaign by diverting contributions that were solicited for the primary election," said Alan Gottlieb, who is the executive director of American PAC. ###

# Political Finance Lobby Reporter

VOLUME XVI, NO. 17

September 13, 1995

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- 7 Kerry issues warning against self-financed rivals
- 10 BTB: Alan Keyes refuses to disclose campaign finances to FEC

"Nothing but innocence took place, but the perception is not good."

Georgia lobbyist who hired nude club dancers for golf trip with state legislators —See Page 10

## FEC Dems run interference for Clinton

By Edward Zuckerman, Editor & Publisher Copyright, 1991, Political Finance & Lobby Reporter

The Federal Election Commission's three Democrats last month barred the agency's doors against its own lawyers who wanted to hit President Clinton's 1992 presidential campaign with what might have been history's biggest penalty for violating federal election law.

So far, the FEC's auditors, lawyers and Republican members have agreed Clinton's campaign should refund at least \$3.0 million to the U.S. Treasury. Only the FEC's Democratic members have stood in the way.

The latest episode came August 16 when, according to documents not yet made public, FEC general counsel Lawrence Noble recommended approval of a "reason to believe" finding that Clinton's campaign violated federal election laws. Had it succeeded, Noble would have opened negotiations on a conciliation agreement that would have

(Continued on Page 7)

### **FEC Democrats protect Clinton**

(From Page 1)

required Clinton's campaign to admit guilt and pay a civil

enalty.

Moble told the Commission that Clinton's campaign received more than \$3.0 million from the U.S. Treasury on the basis of "misleading" statements about its financial condition. Although the penalty suggested by Noble was omitted from the documents, the Commission can demand civil penalties which equal the amount involved in the violation, and double that amount in cases where the violation is "willful and knowing."

Under federal law, presidential candidates lose their eligibility to receive primary matching payments when they win their party nominations. But, they can continue accepting gifts and matching funds to pay debts left from their nomination campaigns.

Clinton continued to collect contributions after nailing down his nomination, along with matching funds, by claiming his campaign had unpaid bills. But the FEC's auditors discovered later that the campaign had sufficient assets to cover its debts. The money that should have been used to pay those debts had been transferred to an account for the general election's legal and accounting expenses.

Under FEC regulations promulgated in 1980, presidential candidates who must not accept private contributions as a condition of receiving taxpayer funds can nonetheless raise private gifts for their so-called GELAC (or General Election Legal, Account-

ing and Compliance) funds.

Noble's "reason to believe" recommendation was blocked by the Commission's three Democrats—John Warren McGarry (who is presently seeking Clinton's renomination for another sixyear FEC term), Danny Lee McDonald and Scott Thomas.

The Commission's August 16 action duplicated last December's vote which denied approval of an audit staff recommendation to demand a \$3.4 million repayment from Clinton's campaign. Embittered by that vote's obvious partisanship, the Commission's three Republican members—Trevor Potter, Joan Aikens and Lee Ann Elliott—co-signed an angry letter that accused their Democratic colleagues of "arbitrary and capricious" behavior.

Ordinarily, the matter would have ended at that point. But a formal complaint filed last March 6 by several conservative groups and radio talk show hosts brought Noble and his legal staff back into the case. For evidence, they merely stapled a copy of the FEC audit division's report to their complaint.

Clinton's campaign defended itself by arguing no violation could have occurred because the Commission didn't demand a repayment when the issue arose during the audit process.

Noble agreed that was a valid point. "However," he said in his report to the Commission, "the violation in this matter does not involve the act of receiving the public funds, but the act of submitting misleading statements to the Commission."

Ironically, a new set of presidential funding and GELAC regulations became effective on August 16, the same day the Commission voted itself into a partisan deadlock that prevented it from enforcing its previous regulations as they applied to Clinton's campaign.

Now, the Commission is girding for legal assaults on two

American PAC, the Second Amendment Foundation and other conservative groups and talk show hosts are preparing a lawsuit that will seek judicial review of the FEC's action that dismissed their complaint; and,

• The Center for Responsive Politics, a Washington-based campaign reform advocacy group, filed a lawsuit last Friday (September 8) that asks the U.S. Circuit Court of Appeals for the District of Columbia to overturn FEC regulations that allow taxpayer-funded presidential candidates to raise private contributions for their GELAC accounts.

In 1992, Clinton and former President Bush each received \$55 million in taxpayer funds to finance their general elections after promising they wouldn't accept private contributions. Yet, Clinton and Bush were permitted by FEC rules to raise \$11 million more from private sources for their GELAC accounts to pay for fundraising, payroll, overhead and computer expenses along with their legal and accounting bills.

The Center asked the FEC to repeal the GELAC rules as an unwanted "loophole to the presidential public funding law." The FEC published the Center's rulemaking petition for comment and left them untouched in the new rules which took effect

August 16.

Explaining its decision, the FEC said it "agrees with the commenters who felt that the separate fund for compliance has worked well since the GELAC rules were promulgated in 1980." It added that repealing the rules would "force presidential campaigns to devote some of their public funds for compliance expenses, instead of using public monies for campaign expenses."

The comments cited by the FEC came from the Democratic and Republican national party committees, the White House counsel's office and a Clinton campaign lawyer.

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# Political Finance Lobby Reporter

**VOLUME XVI, NO. 19** 

October 11, 1995

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"...every PAC would be required to set up a system that would enable each donor to select which candidates or political party committees should receive their money...every PAC would be required to furnish every donor with a list of the names and addresses of the authorized committee of every candidate for federal office."

-See Page 4

## Clinton campaign fails to disclose many donors

(From Page 1)

Reaching a better disclosure performance isn't impossible, as demonstrated by Sen. Phil Gramm's campaign which properly identified the donors whose gifts represented 84% of the committee's total \$8.8 million.

Clinton campaign official Ann Lewis said the Center's analysis was "outdated" because it didn't review amended disclosure reports.

"We weren't completely satisfied with the response we got and, since then, we've gone back and tried to fill in some of those gaps," Ms. Lewis said, promising that reports covering the July 1-September 30 period will achieve "a far higher disclosure level."

Under "best efforts" regulations put into effect last year by the Federal Election Commission, candidates are required to make a genuine effort to obtain donor information and file amended reports.

# Clinton campaign disclosure falls short of FEC's identification requirement

President Clinton's re-election campaign committee is having an easy time raising record-aetting amounts of contributions, but a hard time complying with federal disclosure laws.

Federal law requires disclosure of occupation and business affiliation of donors who contribute \$200 or more to a federal officeseeker.

But, of those gifts meeting the disclosure threshold, Clinton's campaign failed to identify donors whose gifts totalled \$2.8 million—roughly 48% of the \$5.8 million that the committee collected through June 30, according to an analysis by the Center for Responsive Politics.

(Continued on Page 3)



**VOLUME XVI, NO. 20** 

October 20, 1995

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"Simply stated, Clinton
'cooked the books' by diverting
contributions solicited for the
primary election. By not using
these funds to retire debt,
Clinton was able to wrongfully
secure millions in additional
public funds."

-Alan Gottlieb Anti-Clinton conservative

## FEC's failure to demand \$1.4 million repayment by Clinton is hit by lawsuit

Re Edward Juckerman, Editor & Publisher

A lawsuit that challenges the Federal Election Commission's failure to demand a \$1.4 million repayment to the U.S. Treasury by President Clinton's 1992 presidential campaign was filed October 11 in a federal court, just a few days after the Commission's Democrats released a "statement of reasons" to explain why they voted to halt further investigation in the matter.

They are the latest developments in a burgeoning legal quagmire which essentially boils down to this: Clinton's campaign has been accused of hiding some money so it could grab more taxpayer funds and the FEC's Democrats, who've thus far blocked pursuit by the agency's auditors and lawyers, are offended by suggestions that they may have put partisanship above patriotism.

(Continued on Page 4)

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# Democrats release 'statement of reasons' for their votes in Clinton repayment case

(From Page 1)

In separate examinations, the FEC's auditors and lawyers have concluded that Clinton's committee transferred \$1.4 million worth of late-arriving contributions into a fund for legal and accounting expenses. In so doing, Clinton's committee was able to collect extra Treasury funds to help pay its primary election debts.

FEC regulations allow presidential candidates to establish a "General Election Legal and Compliance Fund" (or GELAC, in FECtalk) and raise private contributions for non-election expenses. Excess primary election contributions can be transferred to a GELAC Fund, too, but not until all primary election debts have been extinguished.

So far, the FEC's auditors, lawyers and three Republican members have agreed, Clinton's campaign should repay at least \$1.4 million to the Treasury. But the Commission's three Democrats—Danny Lee McDonald, John Warren McGarry and Scott Thomas—have voted as a bloc to deny its auditors' recommendation for repayment and, more recently, its lawyers' recommendation for further investigation of possible election law violations.

At the FEC, four affirmative votes are required to approve a motion. Thus, the Commission's three Democrats (just as its three Republicans) have the power to create a deadlock that blocks a motion's approval.

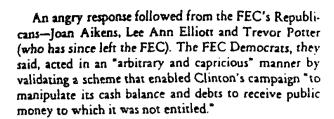
Alan Gottlieb, a conservative whose anti-Clinton views are transparent, filed the complaint when a partisan dead-lock denied approval of the audit staff's recommendation. Gottlieb's attorney, Richard Mayberry, filed the lawsuit after another deadlock prevented the Commission from approving its legal staff's call for an investigation.

"Simply stated, Clinton 'cooked the books' by diverting contributions solicited for the primary election," said Gottlieb who runs the Second Amendment Foundation, the Center for Defense of Free Enterprise and American PAC from his office in Bellvue, Wash.

"By not using these funds to retire debt, Clinton was able to wrongfully secure millions in additional public funds...(T)he net effect was a substantial boost in the amount of campaign resources Clinton/Gore'92 had their hands on for active electioneering," he added.

That same point was raised by the Commission's Democrats last January when they defended their votes that blocked the audit staff's recommendation for repayment.

Letting Clinton off the hook, they said, "furthers the public financing concept" because it allowed taxpayers to pay a larger share of Clinton's primary campaign expenses than would have otherwise been the case.



In the just-released "statement of reasons," the FEC's three Democrats argue that the issues raised by General Counsel Lawrence Noble had already been addressed by the audit. The finding, even though it was actually a partisan deadlock that failed to approve a recommendation (as opposed to an affirmative vote to approve or deny it), "is final and conclusive" under federal law, they said.

"Having examined a set of facts and made a 'final and conclusive' legal determination as to those facts in a Final Audit report, the Commission cannot now arbitrarily abandon those previous audit findings and reach a wholly different conclusion in an enforcement context," they said.

In his report to the Commission, Noble deflected claims by the Clinton campaign that the money transferred to its GELAC Fund did not come from primary election contributions. All of the transferred money, the campaign committee claimed, came from money that hadn't been designated by donors for primary election use, or was money that donors had been asked to redesignate for the GELAC Fund.

Noble was satisfied that the money was contributed for primary election use because the checks "were made payable to 'Clinton for President' or a similar entity, and were solicited, received, deposited and reported" by Clinton's primary campaign committee.

Two FEC regulations were potentially violated, Noble said in his report, one requiring campaign treasurers to file accurate reports and another requiring campaign treasurers to file a post-tampaign statement of assets and liabilities (which is used to determine if a candidate is eligible to continue drawing U.S. Treasury funds if debts remain from the pre-nomination period).

In their statement of reasons, the Commission's Democrats said they couldn't support the general counsel's recommendations because it would have conflicted with the Commission's previous audit findings.

"The Commission cannot now arbitrarily abandon those previous audit findings and reach a wholly different conclusion in an enforcement context," they said.

And they continued: "We do not believe Congress ever intended the enforcement process to be used as a tool for appealing or second-guessing the audit process."

Even if Clinton's campaign received contributions made out to "Clinton for President," the contributions could be legally redesignated by their donors for deposit in the GELAC Fund, the FEC's Democrats maintained.



### FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Democratic Commissinees

STATEMENT OF COMMISSIONERS McDONALD, McGARRY, AND TEOMAS REGARDING CLINTON CAMPAIGN AUDIT

We write this short statement to explain our principal reasons for disagreeing with the staff's recommendation to treat about \$1.5 million in funds raised by the Clinton campaign after the nomination as primary committee assets. The staff's recommendation would have resulted in an additional repayment obligation in that amount on the theory that the primary campaign debt was \$1.5 million smaller and matching funds given to the campaign to pay its debts should be returned.

First, as a matter of law, this is a case of first impression. The Commission has never addressed whether contributions coming in after the nomination with some indications they were intended for the primary, but without the specific signed writing required for proper designation as such (see 11 C.F.R. \$110.1(b)(4) and Advisory Opinion 1990-30, 2 red. Elec. Camp. Pin. Guide (CCE) § 6006), must be treated as primary campaign assets. The staff felt that because the checks were made payable to various names such as "Clinton for President Campaign," the legal requirement for a proper designation as a primary contribution was met. We think the regulation and advisory opinion cited necessitate clearer words of designation for a particular election than that. Also, we disagree that the solicitation materials which appear to have generated some of the contributions at issue satisfy the designation standard without a contributor's signature. Haybe the regulation and advisory opinion shouldn't have been made so strict, but the signature requirement is there.

Second, assuming the contributions at issue didn't have to be treated as primary assets, we fac d the policy issue of whether the Clinton campaign should be forced to treat them as such nonetheless. Because the actual intent of these post-nomination donors was ambiguous at best, because the technical requirements for designation as primary donations were not met, and because the use of public funds (rather than private contributions) to pay campaign expenses is the very essence of the public funding program, we felt it inappropriate to account for these funds in a way that would deprive the Clinton campaign of the use of public funds to pay legitimate post-primary debts. The funds at issue, which came in after the nomination, which

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subsequent to receipt were confirmed in writing by the donors to be intended for the general election legal and accounting compliance fund (GZLAC), and which were not submitted for primarcampaign matching funds, shouldn't be reconfigured as primary campaign assets, we believe.

The staff was of the view that if we don't treat the funds moved to the GELAC as primary assets, we should treat other post-nomination contributions submitted for primary matching as non-matchable and recoup any associated matching funds. This struck us as a "Catch 22" argument. In our view, the contributions submitted for matching can and should be treated differently. First, the Clinton campaign concedes that such contributions must apply as a primary asset, thereby reducing post-nomination entitlement for matching funds. Further, the Commission's longstanding practice, apparently, has been to treat such contributions as matchable even though the technical requirements for written designation have not been met.

What is the impact of our approach? Taxpayer funds, rather than privately raised dollars, are used to pay primary campaign expenses -- a result that furthers the public financing concept. The funds at issue are left available to the GELAC to pay for complying with the many complexities of the law-- again a result that furthers the public financing concept because it insures that candidates continue to opt for public rather than private financing.

Our approach does not undermine the responsibility of the agency to insure that public funds are not spent for things that have no relation to the primary campaign or that are not properly documented. Rundreds of thousands of dollars in the Clinton and Bush campaigns are being treated as non-qualified for these reasons. Nor does our approach undermine our review of campaigns to insure that the state-by-state and overall spending limits are adhered to by the publicly funded campaigns. The -udit reports demonstrate this. All our approach does is allow the use of more public funding dollars to pay for legitimate primary campaign expenses of a publicly funded campaign. As a mather of policy, we think that is a better result than the alternative.

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Danny L: McDonald

Vice Chairman

Commissioner



### FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Democrate Commissivilles

in the Matter of

Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer

Clinton-Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as treasurer

William J. Clinton



#### STATEMENT OF REASONS

CHAIRMAN DANNY LEE MCDONALD **COMMISSIONER JOHN WARREN MCGARRY COMMISSIONER SCOTT E. THOMAS** 

On August 16, 1995, by a 3-3 vote, the Federal Election Commission declined to approve the General Counsel's recommendation to find reason to believe that the Clinton for President Committee ("the Committee") and the Clinton-Gore '92 General Election Compliance Fund ("Compliance Fund") violated 11 C.F.R. §§104.14(d). 9003.3(a)(1) and 9034.5(a). At issue was whether the Committee could transfer to the compliance fund \$1,419,153 in undesignated contributions which it had received after the primary election. Based upon the Commission's regulations and prior Commission decisions, we concluded that the transfer was permissible under existing law and therefore voted against the General Counsel's recommendations.

1.

The Presidential Primary Matching Payment Account ("the Act"), 26 U.S.C. §§9031-9042, was enacted in 1974 to provide partial federal financing for the campaigns of qualifying presidential primary candidates. See Buckley v. Valeo, 424 U.S. 1, 89 (1976). Eligible candidates may receive payments from the Act to match individual contributions up to \$250, see 26 U.S.C. §§9034(a) and 9037, subject to an overall ceiling of 50% of the expenditure limitation contained in 2 U.S.C. §441a(b)(1)(A). See 26 U.S.C. §9034(b). For the 1992 presidential primary campaign, the maximum entitlement that any candidate could receive in matching funds was \$13,810,000. The 1992 Clinton Primary Committee received \$12,536,135 in matching funds.

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After the conclusion of the primary campaign, the Commission audited the Clinton for President Committee as required by 26 U.S.C. §9038. On December 27, 1994, the Commission approved its Final Audit Report on the Committee and made an initial determination that the Committee must pay \$1,383,587 to the United States Treasury. The Committee did not dispute this determination, and it thus became final. 11 C.F.R. §9038.2(c)(1). On January 30, 1995, the Committee submitted a check payable to the United States Treasury for \$1,383,587.

A large portion of the Committee's repayment (\$1,072,344) resulted from its receipt of matching funds in excess of its entitlement. Under the Act, a candidate may receive matching funds after the candidate's date of ineligibility "to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible." 26 U.S.C. §9033(c)(2)<sup>2</sup>. Because many of the expenses the Committee included as net outstanding campaign obligations were determined through the audit not to be qualified campaign expenses, see 11 C.F.R. §9034.4(b), the Commission ordered the repayment of matching funds that corresponded to such non-qualified debt.

By a 3-3 vote, the Commission did not approve an audit staff recommendation to seek a repayment in addition to the \$1,383,587 already required of the Committee.<sup>3</sup>

The Commission's regulations explain that if, on the date of ineligibility, a candidate has "net outstanding campaign obligations" ("NOCO"), see 11 C.F.R. §9034.5(a):

that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment the e are remaining net outstanding campaign obligations, i.e., the sum of contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations.

### 11 C.F.R. §9034.1(b).

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The Act requires the Commission to conduct a "thorough examination and audit" of the campaign finances of every publicly funded candidate after the campaign for the nomination ends. 26 U.S.C. §9038(a). If the Commission finds during its audit that "any portion of the payments... from the matching payment account was in excess of the aggregate amount of payments" to which the candidate was entitled, the Commission must notify the candidate, and the candidate must pay to the Secretary of the Treasury an amount equal to the amount of excess payments. 26 U.S.C. §9038(b).

Candidates who remain eligible to receive matching funds throughout the campaign for the nomination become ineligible on the date the party nominates its presidential candidate. See 26 U.S.C. §9033(c)(1); 11 C.F.R. §§9032.6, 9033.5. Thus, the ineligibility date for the Primary Committee was July 15, 1992.

It is not unusual for the Commission to split 3-3 on audit repayment matters. In considering the Final Repayment determination for the Bush/Quayle '92 Committees, for example, our three colleagues voted against a recommendation that the Bush/Quayle '92 Primary Committee make a repayment to the United States Treasury for failure to produce adequate supporting documentation for certain expenses claimed to be primary-related. As a result, the

Specifically, the Commission did not include in the NOCO calculation (as Committee assets) contributions totalling \$1,419,153 which had been received after the candidate's date of ineligibility, placed in an escrow account, and later transferred to the Clinton Compliance Fund. These funds, as we explain more fully later, were not designated by the donors as contributions to the Committee. Nor were they submitted for primary matching funds. After receipt and before transfer to the Compliance fund, they were verified in writing by the donors as Compliance Fund donations. Having not treated this amount as a reduction of the Committee's primary matching fund entitlement, the Commission then unanimously approved the resulting repayment determination of \$1,383,587. No action was filed challenging or seeking judicial review of this final Commission determination. See 26 U.S.C. §§9036 and 9041.

On March 9, 1995, Alan Gottlieb, Michael A. Siegel, Todd Herman, Joseph P. Tartaro, the Second Amendment Foundation, the Center for the Defense of Free Enterprise, and the American Political Action Committee ("complainants") filed a complaint with the Federal Election Commission against the Clinton Committee, the Compliance Fund, its treasurer, and William J. Clinton ("respondents"). The complaint generally tracked the rejected analysis of the audit staff and alleged that the Committee "manipulated its post-convention cash balance and debts in order to receive public matching funds to which Clinton was not entitled and were used in the general election by the Clinton/Gore '92 General Election Compliance Fund." Complaint at 3. More specifically, the complaint alleged:

[I]n excess of \$5.8 million dollars in private contributions were solicited and received by the Clinton for President Committee. Instead of application of these funds to extinguish a campaign debt in excess of \$7 million as requested by FEC regulations, the Clinton Committee intentionally and illegally diverted in excess of \$2.4 million dollars to a legal and accounting fund for the general election. This scheme enabled the Clinton Committee to receive \$2.9 million in additional matching funds to which it was not entitled.

Complaint at 4.

On August 16, 1995, the Commission considered the General Counsel's Report which recommended that the Commission find reason to believe that the respondents violated 11 C.F.R. §9003.3(a)(1)<sup>4</sup> by transferring \$1,419,153<sup>5</sup> in post-primary

amount in question was not included in the repayment determination approved by the Commission.

- The relevant portion of this provision, quoted in its entirety at n.6, deals with "[c]ontributions that are made after the beginning of the [general election] expenditure report penod but which are designated for the primary election...." 11 C.F.R. §9003.3(a)(1)(iii) (emphasis added).
- The General Counsel's Report explains the difference between the \$2.4 million figure cited in the complaint and the \$1,419,153 figure as follows:

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contributions to the Compliance Fund. The General Counsel's Report argued these funds were contributions designated for the Committee that should have been applied towards the reduction of NOCO. The General Counsel's Report also recommended, as a consequence of their first recommendation, that the Commission find reason to believe the Committee and William J. Clinton violated 11 C.F.R. §§104.14(d) and 9034.5(a) by submitting NOCO statements that did not accurately reflect the Committee's outstanding obligations and assets. A motion to approve the Office of General Counsel's recommendations failed. Three Commissioners supported the recommendation and three Commissioners (the undersigned) opposed.

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The General Counsel's Report concludes that "the transfer of \$1,419,153 from the Primary Committee to the Compliance Fund was not in accordance with 11 C.F.R. §9003.3(A)(1)(iii) [sic] because such contributions were primary contributions which the Primary Committee should have applied towards the reduction of its primary expenses." General Counsel's Report at 15.

We cannot support this conclusion, first of all, because it conflicts with the findings of the Commission in its Final Audit Report. The factual and legal determinations which the Commission previously made in the Final Audit Report on the Clinton Primary Committee are binding upon the Commission's actions in MUR 4192. Under the heading of "Finality of determinations," 26 U.S.C. §9036(b) plainly states:

[All determinations made by it [the Commission] under this chapter are final and conclusive, except to the extent that they are subject to examination and audit by the Commission under Section 9038 and judicial review under Section 9041.

26 U.S.C. §9036(b) (emphasis added). Having examined a set of facts and made a "final and conclusive" legal determination as to those facts in a final audit report, the Commission cannot now arbitrarily abandon those previous audit findings and reach a wholly different conclusion in an enforcement context.

The precise issue of whether 11 C.F.R. §9003.3(a)(1)(iii) precluded transferring the \$1,419,153 in question to the Compliance Fund was resolved by the Commission's 3-3 vote and the resulting repayment determination. The audit staff specifically argued

The Audit Division did not consider [as primary campaign assets] \$1,025,404 in private contributions that were transferred to the Compliance Fund after September 2, 1992. This is the date that the Audit Division calculated as the Committee no longer having net outstanding campaign obligations. Attachment 3 [of General Counsel's Report] at 86.

General Counsel's Report at 4 n.6. In essence, there is no basis for questioning whatsoever the transfer of contributions that could no longer be applied to primary debt retirement.

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at the Final Audit Report stage: "11 C.F.R. §9003.3(a)(1)(iii) clearly states that the redesignations pursued by the Committee were not permissible." Final Audit Report at 85. That approach was rejected by the undersigned, and hence by the Commission, because the contributions at issue were not technically "designated for the primary election" and, therefore, were not subject to §9003.3(a)(1)(iii). See Statement of Commissioners McDonald, McGarry, and Thomas regarding Clinton Campaign Audit. (December 16, 1994).

On the basis of the "final and conclusive" determination in the Final Audit Report, we, therefore, cannot find that there was a violation of 11 C.F.R. §9003.3(a)(1)(iii). The Final Audit Report totals for the amount of post-nomination private contributions received by the Committee and the amount received in excess of entitlement are predicated on a rejection of the application of §9003.3(a)(1)(iii) to the funds at issue. The Final Audit Report findings demonstrate that the \$1,419,153 in transferred funds were not considered "primary contributions which the Primary Committee should have applied towards the reduction of its primary expenses." General Counsel's Report at 15. These determinations are conclusive and binding upon the Commission in its consideration of MUR 4192. We do not believe Congress ever intended the enforcement process to be used as a tool for appealing or second-guessing the audit process. Accordingly, we voted against the General Counsel's recommendations, all of which depend on a rejected construction of 11 C.F.R. §9003.3(a)(1)(iii).

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Even if the factual findings and legal conclusions of the Final Audit Report were to be completely disregarded, we still could not agree with the General Counsel's recommendation that the Commission find reason to believe that the respondents violated 11 C.F.R. §9003.3(a)(1)(iii).<sup>6</sup> The General Counsel's Report argues that the

- (iii) Contributions that are made after the beginning of the expenditure report period but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election, may be redesignated for the legal and accounting compliance fund and transferred to or deposited in such fund if the candidate obtains the contributor's redesignation in accordance with 11 C.F.R. §110.1. Contributions that do not exceed the contributor's limit for the primary election may be redesignated and deposited in the legal and accounting compliance fund only if—
- (A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;
- (B) The redesignations are received within 60 days of the Treasurer's receipt of the contributions;
- (C) The requirements of 11 C.F.R. 110.1(b)(5) and (1) regarding redesignations are satisfied; and
- (D) The contributions have not been submitted for matching.

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<sup>&</sup>lt;sup>6</sup> In its entirety, that provision states:

respondents violated 1 (iii) by transferring to the Compliance Fund \$1,419,153 in private of applying them towards NOCO reduction. The fundamental quest whether the transferred contributions, which were made after were in fact 'designated for the primary election." If these contriguated for the primary election, their transfer would not be pd 59003.3(a)(1)(iii) and, accordingly, there would not be a violation der Commission regulations and Commission precedent, se contributions were not designated for the primary election.

The General Coul that the contributions at issue here were designated to the Primalause they were made payable to 'Clinton for President' or a similal cited, received, deposited and reported by the Primary Committee vanding campaign obligations." General Counsel's Report at 15-1 legal conclusion, the General Counsel's Report relies on an impligheory. Not only does the Office of General Counsel's standard correct legal standard set out at 11 C.F.R. §110.1(b)(4), but to established Commission precedent.

\*Commission regul to determine the election for which a contribution is made." Ad 30, 2 Fed. Elec. Camp. Fin. Guide (CCH) 16006. Those regulations ntribution is not designated in writing by the donor for a particular action is considered to be made with respect to the next election. 11 Ch. The regulations further provide that if the contribution is designablection by the donor in writing, it is made for the election so designa 1(b)(2)(i). Commission regulations state that "a contribution shall be lesignated in writing for a particular election if-

- (1) The cont check, money order, or other negotiable in any indicates the particular election withhe contribution is made; or
- (ii) The contanied by a writing, signed by the contributor, wes the particular election with respect to win is made; or

All contributions so redigited shall be subject to the contribution limitations meral election, pursuant to 11 C.F.R. 110.1(b)(2)(i).

11 C.F.R. §9003.3(a)(1)(iii) (em

after the primary election.

This case is thus unlike s the Dukakis For President Final Audit, where the Commission dealt with were received <u>before</u> the primary election. Clearly, those contributions, if upe considered primary election contributions. See 11 C.F.R. §110.1(b)(2)(ii). Pributions at issue in MUR 4192 were received (iii) The contribution is redesignated in accordance with 11 C.F.R. §110.1(b)(5).

11 C.F.R. §110.1(b)(4).

Applying the standards of 11 C.F.R. §110.1(b)(4), it is clear that the contributions at issue in MUR 4192 were not "designated in writing" for the primary election. None of the transferred contributions indicated on the face of the written instrument that they were being made for a particular election. 11 C.F.R. §110.1(b)(4)(i). Nor were any of the contributions accompanied by a signed writing indicating that they were being made for the primary election. 11 C.F.R. §110.1(b)(4)(ii). Finally, the contributions at issue were not redesignated for the primary. (In fact, to be cautious, the Committee secured written redesignation of these receipts as Compliance Fund donations.) Because the regulatory requirements of 11 C.F.R. §110.1(b)(4) were not met, these contributions cannot be viewed as designated for the primary election.

As a result, there can be no violation of 11 C.F.R. §9003.3(a)(1)(iii). In addition, there can be no violation of 11 C.F.R. §§104.14(d) and 9034.5(a) for submitting NOCO Statements that did not accurately reflect the Primary Committee's outstanding obligations and assets.

Our reading of §110.1(b)(4) is confirmed by Commission precedent. In Advisory Opinion 1990-30, <u>supra</u>, the Commission rejected an "implied contributor intent" theory identical to the one advanced in the General Counsel's Report. In so holding, the Commission emphasized that it is the "Commission['s] regulations [which] set out rules to determine the election for which a contribution is made." Id.

In Advisory Opinion 1990-30, the Helms Committee had asked whether it would satisfy the designation requirements and could treat post-election contributions as debt retirement contributions if it: (1) included in its solicitation mailings a notice to potential contributors that their donations would be used to pay off 1990 general election debt; (2) provided the same notice on contribution slips enclosed in the solicitation; (3) included an additional line on the disclaimer<sup>8</sup> stating that funds received would be used for 1990 debt elimination; and (4) indicated that it would not be soliciting for any other purpose. And much like the facts present in MUR 4192, the checks would be received, deposited and reported by the committee serving as the vehicle for the prior election. After discussing the requirements of §110.1(b)(4), the Commission stated:

Based on the foregoing, the Commission concludes that the Committee will not meet the designation requirements if it takes the steps proposed. The proposed steps would satisfy some of the elements of a clear designation. In order to confirm donor intent, however, regulations require that the contributor's

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The law requires a political committee soliciting contributions to include a disclaimer saying that the committee paid for the communication. 2 U.S.C. §441d(a)(1); 11 C.F.R. §110.11(a)(1)(i).

(iii) The contribution is redesignated in accordance with 11 C.F.R. §110.1(b)(5).

11 C.F.R. §110.1(b)(4).

Applying the standards of 11 C.F.R. §110.1(b)(4), it is clear that the contributions at issue in MUR 4192 were not "designated in writing" for the primary election. None of the transferred contributions indicated on the face of the written instrument that they were being made for a particular election. 11 C.F.R. §110.1(b)(4)(i). Nor were any of the contributions accompanied by a signed writing indicating that they were being made for the primary election. 11 C.F.R. §110.1(b)(4)(ii). Finally, the contributions at issue were not redesignated for the primary. (In fact, to be cautious, the Committee secured written redesignation of these receipts as Compliance Fund donations.) Because the regulatory requirements of 11 C.F.R. §110.1(b)(4) were not met, these contributions cannot be viewed as designated for the primary election.

As a result, there can be no violation of 11 C.F.R. §9003.3(a)(1)(iii). In addition, there can be no violation of 11 C.F.R. §§104.14(d) and 9034.5(a) for submitting NOCO Statements that did not accurately reflect the Primary Committee's outstanding obligations and assets.

Our reading of §110.1(b)(4) is confirmed by Commission precedent. In Advisory Opinion 1990-30, <u>supra</u>, the Commission rejected an "implied contributor intent" theory identical to the one advanced in the General Counsel's Report. In so holding, the Commission emphasized that it is the "Commission['s] regulations [which] set out rules to determine the election for which a contribution is made." Id.

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Based on the foregoing, the Commission concludes that the Committee will not meet the designation requirements if it takes the steps proposed. The proposed steps would satisfy some of the elements of a clear designation. In order to confirm donor intent, however, regulations require that the contributor's

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The law requires a political committee soliciting contributions to include a disclaimer saying that the committee paid for the communication. 2 U.S.C. §441d(a)(1); 11 C.F.R. §110.11(a)(1)(i).

The General Counsel's Report also apparently argues that since some of the Committee's other post-DOI receipts were submitted for matching funds, this demonstrates that the post-DOI receipts transferred to the compliance fund were primary contributions. General Counsel's Report at 16. This analysis misses the mark in several respects. To begin with, as we point out, supra, the Commission's rules for determining whether a contribution has been designated for a particular election are found at 11 C.F.R. §110.1(b)(4). In resolving this issue, the rules for determining whether a contribution is matchable, see 11 C.F.R. §§9034.2 and 9034.3, are irrelevant. In addition, there is no evidence that any undesignated receipts transferred to the Compliance Fund and at issue in this case were also submitted for matching funds. Finally, even if the rules of matchability were somehow relevant, those rules are far different than the strict requirements of §110.1(b)(4). As explained in the Commission's Guideline for Presentation in Good Order:

An immediately matchable contribution is one that is drawn on an individual's personal account and is signed by the identified accountholder. The Written Instrument bears a full date (month, day, year) reflecting that it was written on or after January 1, 1991, but not later than December 31, 1992 (provided it was also deposited on that date) and it is made payable to the candidate or an authorized committee for a presidential campaign. It has identical numerical and written amounts.

FEC Guideline for Presentation in Good Order, 43 (August, 1991). Unlike §110.1(b)(4), there is no requirement in the matchability regulations that the check or other written instrument contain express words of designation. Thus, it is possible that a check could satisfy the Commission's matchability regulations but not the §110.1(b)(4) designation requirements.<sup>12</sup>

For all of the above reasons, we voted against the General Counsel's recommendations to find that the respondents violated 11 C.F.R. §§104.14(d), 9003.3(a)(1) and 9034.5(a).

IV.

At the time of the filing of the complaint in this matter, the Commission was reviewing its regulations governing public financing of presidential primary and general election candidates. Those regulations have now been revised. 60 <u>Fed. Reg.</u> 31854 (June 16, 1995). As part of these changes, "new language has been added to resolve questions regarding depositing designated and undesignated contributions in the GELAC." <u>Id.</u> at 31856. Through the rulemaking process, therefore, the Commission

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As a matter of policy and practice the Commission has taken this approach. The rules and regulations governing the public funding process are cumbersome enough. To excessively restrict the matchability of post-nomination contributions would prove counter-productive if the result was to drive the candidate towards more private fundraising and less reliance on the very public funding that Congress has created to free campaigns from the <u>quid pro quo</u> environment.

has sought to resolve the legal issue which divided it in MUR 4192 and provide new rules for future presidential primary committees—rules that were not applicable to the respondents in this matter.

We strongly believe that there was not a violation under the cld rules. This question, in fact, was decided at the "final and conclusive" audit determination. It now is time for the Commission to move on and prepare for the 1996 Presidential campaign. See <u>Dukakis.v. FEC</u>, 53 F.3d 361 (D.C. Cir. 1993) (Commission is time barred from imposing repayment obligation after expiration of statutory notification period, see 26 U.S.C. §9038(b)(1-3).).

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9-18-95

9/18/91 Date Danny Lee McDoneld

Danny Leé McDonald Chairman

John Warren McGarry Commissioner

Scott E. Thomas Commissioner

## Anderson Report - Tab 22

22001-22008: Relevant sections of FEC Matter Under Review 4192 (Doc A)

22009-22029: Relevant sections of follow-up suit against FEC (Doc B)

#### Document 22001-06/AMost Significant pages from MUR 4192

- Matter Under Review (MUR) 4192 was filed in March 1995 and was a complaint to the FEC that the CPC had been allowed to keep some \$3 million in undeserved matching funds.
- The FEC's General Counsel took the opportunity to recommend to the FEC Commissioners that they find reason to believe the CPC violated two election laws. See Tab 21 for a copy of that opinion.
- The resulting Commission vote was another 3-3 tie; MUR 4192 was dropped.

#### Document 22009-29/BU.S. District Court Case 1:95CV01923

- After being rejected in MUR 4192, the same group sued the FEC for failing to enforce the election law.
- The U.S. District Court dismissed the case, not based on the merits of their claim that the FEC let the CPC get away with illegal action but, rather, on the theory that taxpayers have no standing to challenge FEC decisions in court. That matter is now on appeal.

# UNITED STATES OF AMERICA BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

President Bill Clinton, The Clinton For President Committee, and Robert A. Farmer, Bruce R. Lindsey Treasurers

MUR # 4192

Respondents.

#### COMPLAINT

Complainants, by and through counsel, believing a violation of statutes and regulations under the jurisdiction of the Federal Election Commission ("FEC" or "Commission") has occurred initiate this complaint pursuant to 2 U.S.C. section 437g(a)(1) and 11 C.F.R. section 111.4 against the Respondents identified below.

#### **PARTIES**

Complainant Alan Gottlieb, 12500 Northeast Tenth Bellevue, WA 98005, is a citizen of the United States, member of the Republican Party, registered voter in the state of Washington, and taxpayer to, among others, the U.S. government. caucused in the 1992 presidential primary and voted in the 1992 general presidential election, and intends to caucus in the 1996 primary and vote in the 1996 general presidential election.

Complainant, Michael A. Siegel, 919 30th Ave South, Seattle 98144, is a citazen of the United States, registered voter in the state of Washington, and taxpayer to, among others, the U.S. Siegel is a member of the Democratic Party and government. caucused in the 1992 presidential primary and voted in the general elections. Siegel intends to caucus in the 1996 primary and vote in the 1996 general presidential election.

Complainant Todd Herman, 11203 East 36, Spokane, WA 99206, is a citizen of the United States, member of the Republican Party,

registered voter in the state of Washington, and taxpayer to, among others, the U.S. government. Herman caucused in the 1992 presidential primary and voted in the 1992 general presidential election, and intends to caucus in the 1996 primary and vote in the 1996 general presidential election.

Complainant Joseph P. Tartaro, 267 Linwood Ave., Buffalo, NY 14209, is a citizen of the United States, registered voter in the state of New York, and taxpayer to, among others, the U.S. government. Tartaro is a registered Democrat and voted in the 1992 presidential primary and general elections. Tartaro intends to vote in the 1996 presidential primary and general elections.

Complainant Second Amendment Foundation, 12500 Northeast Tenth Place, Bellevue, WA 98005, is a tax-exempt public charity organized and operated to educate the American public on the issues impacting the Constitutional right to bear arms. The Foundation is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

Complainant Center For the Defense of Free Enterprise, 12520 Northeast Tenth Place, Bellevue, WA 98005, is a tax-exempt public charity organized and operated to educate the American public on the issues impacting free enterprise in the United States and has a specific interest in the fiscal responsibility of the federal government, misuse of tax funds, government waste, and the effectiveness of the functioning of government. The Center is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

Complainant American Political Action Committee ["AmeriPAC"], POB 1682 Bellevue, WA 98209, is a political committee organized and operated to promote the candidacies of individuals whose position on the issues promotes the individual civil liberties of all Americans and has a specific interest in promoting honest and lawful campaign conduct by candidates. AmeriPAC is a multicandidate political committee registered with the Federal Election Commission. AmeriPAC has an organizational interest in equal access to campaign finance for all candidates, prevention of any candidate receiving unfair campaign advantage through violation of election laws and in fair and competitive elections administered with the same rules and regulations for all candidates.

Respondent Bill Clinton was a candidate in the Democratic primary and general election for President of the States in 1992. He is the President of the United States, and his address is The White House, 1600 Pennsylvania Avenue, NW, Washington, D.C.

Respondent Clinton For Presidency Committee [the "Clinton Committee"] is the principal campaign committee of Bill Clinton for the primary election of 1992. The Committee is registered with the Federal Election Commission and identifies it address to be POB 615, Little Rock, Arkansas 72203 on its May 22, 1992 amended Statement of Organization.

Respondent Robert A. Farmer is Treasurer, and Respondent Bruce R. Lindsey is Assistant Treasurer of the Clinton For President Committee. The Treasurers' address is the same as the Clinton Committee's address.

Other interested parties include:

The Clinton/Gore '92 Committee is the principal campaign committee of Clinton for the 1992 general election. Its address is 112 West Third Street, Little Rock, Arkansas 72203. Robert Farmer is identified on the 7/14/92 Statement of Organization as the Treasurer.

The Clinton/Gore '92 General Election Legal and Accounting and Compliance Fund [the "GELAC" or the "Clinton/Gore'92 General Election Compliance Fund"] is the committee for the general election operated to maintain compliance with federal election laws for the Clinton campaign. Its address is POB 615, Little Rock, Arkansas 72203. David Watkins is identified as the treasurer on its 5/22/92 Statement of Organization.

#### OVERVIEW OF COMPLAINANT

President Clinton engaged in a scheme to enhance the resources available for the promotion of his candidacy in the 1992 general election. His primary election campaign committee, the Clinton For President Committee, manipulated its post-convention cash balance and debts in order to receive public matching funds to which Clinton was not entitled and were used in the general election by the Clinton/Gore '92 General Election Compliance Fund.

These resources were assumedly used for legal and accounting purposes, and thus subsidized Clinton's direct electioneering and the Clinton/Gore'92 Committee's campaign efforts since additional campaign resources were not spent on compliance matters.

Specifically, in excess of \$5.8 million dollars in private contributions were solicited and received by the Clinton For Instead of application of these funds to President Committee. extinguish a campaign debt in excess of \$7 million as required by FEC regulations, the Clinton Committee intentionally and illegally diverted in excess of \$2.4 million dollars to a legal and accounting fund for the general election. This scheme enabled the Clinton Committee to receive \$2.9 million in additional matching funds to which it was not entitled.

The U.S. Treasury, and the American taxpayer has suffered damages in an amount calculated to be \$2.9 million.

This complaint alleges the Respondents' conduct constitutes a violation of chapter 95 of title 26 of the United States Code and is brought pursuant to 2 U.S.C. section 437g (a) (1).

#### VIOLATIONS OF FEDERAL ELECTION LAWS

The alleged conduct of the Respondents which violated statutes regulations under the jurisdiction of the Commission, specifically the Presidential Primary Matching Payment Account Act, and the Commission regulations promulgated thereunder. follows:

The Clinton Committee solicited contributions up to and including July 17, 1992 for the primary election for the Clinton For President Committee and represented to the contributors that the contributions could be matched by federal funds. contributions were made payable to the Clinton For President Committee and the Clinton For President Committee deposited the contributions in the Clinton For President campaign depository. Clinton was nominated on July 15, 1992 which is his date of ineligibility, or "DOI", for additional primary public financing. After the date of ineligible private contributions must be applied to a campaign's deficit before any matching funds may be received by the Clinton Committee.

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Page 4 of 8.

Contributions deposited between July 16 and October 2, 1992 by the Clinton Committee from these solicitation totaled in excess of \$5.8 million. Of the funds collected as a result of the solicitation for the primary election, the Clinton Committee transferred \$2.4 million to the Clinton/Gore'92 General Election Compliance Fund, instead of applying them to reduce the post-convention debt. This had the effect of skewing the net balance for outstanding campaign obligations, or "NOCO" which is the basis for receiving public funds to retire the campaign debt.

Between July 16, and October 2, 1992 the Committee submitted for matching requests totaling over \$6 million. Relying on the accuracy of the submissions as being eligible to be matched, the FEC certified for payment the same amount which was paid by the U.S. Treasury.

Thus, the Clinton Committee was able to receive an additional \$2.9 million dollars to which it was not entitled under 26 U.S.C. section 9034.1. The Committee received this inflated amount because they intentional made a business decision not to apply all of their primary funds to their net outstanding campaign obligations in order to receive additional campaign resources from public funds.

See generally the FEC Report of the Audit Division, relevant sections are attached as Exhibit 1 at 78-91 and are incorporated by reference herein and the Statement of Reasons to the Final Audit Report by Commissioners Elliot, Aikens, and Potter which is attached as Exhibit 2, and is incorporated by reference herein.

The Respondent's actions to inflate the NOCO by divert post-convention contributions from use in retiring primary election debt in order to receive close to \$3 million in public funds to which Clinton was not entitled violates the Presidential Matching Funds Act, 26 U.S.C. section 9034 and 9037 and 11 C.F.R. section 9034.1 (b), and are an illegal redesignation violative of 11 C.F.R. section 9003.3(a)(1)(iii)(A) and (D).

B. As previously stated, the Clinton Committee submitted funds raised after the date of ineligibility from the referenced solicitations for matching funds for primary election debt retirement and then transferred some of these funds to the GELAC

for general election compliance. The transferred funds were indistinguishable from the funds submitted for matching with taxpayer dollars in that they were solicited by the same mailing, mailed to the same address, made payable to the same committee and received at the same time. See Statement of Reasons, Exhibit 2 at 6.

Assuming ad arguendo some of the contributions were not designated for the primary, the only position consistent with the letter and spirit of the Presidential Primary Matching Payment Account Act is that none of the contributions were designated for the primary. Accordingly none of these contributions are eligible for matching funds.

The act of making a submission for matching funds based upon nonmatachable contributions is in violations of 26 U.S.C. section 9034 and 9037.

#### THE PUBLIC INTEREST

For the American people, the following, inter alia, public interests are at stake in the Commission reaching a prompt determination that the Respondents violated relevant federal election laws and applying appropriate sanctions:

- a. preserve the integrity of the public financing system;
- b. punish the unfair advantage Clinton took in the 1992 general election by use of millions of extra campaign dollars;
- c. deter future candidates from manipulating their books in the 1996 presidential primaries to secure unfair competitive advartage;
- d. restitution to the U.S. Treasury of \$2.9 million;
- e. replenish the federal treasury to ensure there is sufficient funds for public financing of the 1996 presidential election; and
- f. ensure equal justice under the laws in the application of the campaign finance statutes in an even-handled manner to all persons -- even if one Respondent is the President of the United States.

Page 6 of 8.

For the Federal Election Commission the following, inter alia, public interests are at stake in the Commission reaching a prompt determination that the Respondents violated relevant federal election laws and applying appropriate sanctions:

- a. restore public confidence in the Commission's ability to make a unified nonpartisan decision directly impacting the agency's power to protect the public fisc;
- avoid abrogation of Congressional authority by turning a conditional grant of public funds into a flat entitlement for maximum financing; and
- c. employ proper procedure to change agency policy by implementing rulemaking, with the opportunity for public comments, on any changes the FEC will make in the public financing regulations.

The individual Complainants and the over 650,000 members, supporters and contributors of the Second Amendment Foundation, Center For the Defense of Free Enterprise, and American Political Action Committee are committed to vindication of the these interests in this case.

#### CIVIL PENALTY

The Respondents committed knowing and willful violations of the Presidential Primary Matching Payment Account Act. The Commission should impose pursuant to 2 U.S.C. section 437g(a)(5)(B) a penalty in an amount equal to 200% of the contributions and expenditures in the violation, or \$5.8 million.

The diversion of millions of dollars in a presidential campaign is a major campaign decision which would involve the candidate and the campaign treasurers. Each individual is responsible for the actions of the Clinton For President Committee because, upon information and belief, each either participated in the course of conduct or assented to this conduct or ratified it.

The Respondents are jointly and severally liable for the penalties.

#### CONCLUSION

For these reasons, all Complainants respectfully request that the Commission find that Respondents have violated the federal election laws, and impose significant penalties. Commission is familiar with the underlying facts and the FEC determination of these election law violations will have a significant impact on similar campaign tactics employed by candidates in the 1996 presidential primaries, the Complainants request that this matter under review be processed on an expedited

Respectfully submitted,

Date: March 9, 1995

Counsel For Complainants

Suite 700 888 Sixteenth Street, NW Washington, DC 20006 Telephone: 202-785-6677

FAX: 202/835/1912

Of counsel: Robert Ricker

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

	<del></del>
ALAN GOTTLIEB	)
12500 Northeast Tenth Place	)
Bellevue, WA 98005	<b>)</b>
	;
TODD HERMAN	)
11203 East 36	
Spokane, WA 99206	CASE NUMBER 1.95CV01923
Atten arman	JUDGE: Thomas Penfield Jackson
MIKE SIEGEL	
919 30th Ave South	DECK TYPE: Civil General
Seattle 98144	DATE STAMP: 10/11/95
JOSEPH P. TARTARO	
267 Linwood Ave.	<b>\</b>
Buffalo, NY 14209	,
	)
SECOND AMENDMENT FOUNDATION	-; - FILED
12500 Northeast Tenth Place	)
Bellevue, WA 98005	→ ( 307 ± 1995 -
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CENTER FOR THE DEFENSE	Clerk, C.S. District Cour District of Columnic
OF FREE ENTERPRISE	)
12520 Northeast Tenth Place	)
Bellevue, WA 98005	)
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and	<b>)</b>
	)
AMERICAN	)
POLITICAL ACTION COMMITTEE	)
POB 1682	)
Bellevue, WA 98009	)
Plaintiffs,	)
v.	) C.A. No.
•	)
FEDERAL ELECTION COMMISSION	)
999 E Street, NW .	)
Washington, D.C. 20006	)
	)
Defendant.	)
	)

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DOCE 1

22009

#### COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

#### INTRODUCTION

- 1. Plaintiffs petition the Court to declare that the defendant Federal Election Commission ["FEC" or "Commission"] acted contrary to law when, on August 16, 1995, it ignored the recommendation of its General Counsel and dismissed an administrative complaint that plaintiffs had filed with the Commission on March 9, 1995. Plaintiff's administrative complaint in Matter Under Review 4192 ["MUR 4192"] alleged that President William J. Clinton, The Clinton For President Committee [the "Primary Committee"], its Treasurers and The Clinton/Gore '92 General Election Legal and Accounting and Compliance Fund [the "GELAC" or the "Compliance Fund"], and its treasurers violated the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9034 and 9037 which resulted in the Clinton campaign receiving over \$3 million dollars of public funds to which the campaign was not entitled. Exhibit A.
- 2. President Clinton, the Primary Committee and its Treasurers applied the Federal Election regulations controlling transfers to a Legal and Accounting Compliance Fund, 11 C.F.R. 9003.3(a)(1), in a manner that allowed it to unlawfully obtain more public

funds than those to which it was entitled by arbitrarily treating the same contributions as both matchable primary contributions and contributions intended for the Compliance Fund.

- 3. As the FEC's General Counsel correctly found, President Clinton's, the Primary Campaign's and its Treasurers' and the Legal Compliance Fund's and its Treasurers' conduct violated 11 C.F.R. §§ 9003.3(a)(1), 104.14 (d), and 9034.5(a). The FEC by a 3-3 vote, however, was unable to find a violation of the Federal Election Campaign Act of 1971, as amended [the "Campaign Act" or "FECA"], and dismissed the complaint.
- 4. Plaintiffs are aggrieved by the Commissions dismissal of its complaint against President Clinton, the Primary Committee, and its Treasurers. Pursuant to 2 U.S.C. § 437g(a)(8) of the FECA, plaintiffs request this Court: (a) to declare the Commission's dismissal of its complaint was arbitrary and capricious and contrary to law, as specified below, and (b) to order the Commission to precede to act on the allegations of plaintiffs' complaint against President Clinton, the Primary Campaign and its Treasurers, in conformance with the Court decision within thirty days.

#### JURISDICTION AND VENUE

5. Jurisdiction of this Court is conferred under 2 U.S.C. §

437q(a)(8)(A) and 28 U.S.C. § 1331.

6. Venue resides in this district pursuant to 2 U.S.C. § 437g(a)(8)(A) and 28 U.S.C. § 1391 (b) and (e).

#### PARTIES

- 7. Plaintiff Alan Gottlieb, 12500 Northeast Tenth Place,
  Bellevue, WA 98005, is a citizen of the United States, member of
  the Republican Party, registered voter in the state of
  Washington, and taxpayer to, among other governmental entities,
  the U.S. government. Gottlieb caucused in the 1992 presidential
  caucuses and voted in the 1992 general presidential election, and
  intends to caucus in the 1996 caucus and vote in the 1996 general
  presidential election.
- 8. Plaintiff, Michael A. Siegel, 919 30th Ave South, Seattle, WA 98144, is a citizen of the United States, registered voter in the state of Washington, and taxpayer to, among other governmental entities, the U.S. government. Siegel is a member of the Democratic Party and caucused in the 1992 presidential caucuses and voted in the general elections. Siegel intends to caucus in the 1996 caucuses and vote in the 1996 general presidential election.
- 9. Plaintiff Todd Herman, 11203 East 36, Spokane, WA 99206, is a

citizen of the United States, member of the Republican Party, registered voter in the state of Washington, and taxpayer to, among other governmental entities, the U.S. government. Herman caucused in the 1992 presidential caucuses and voted in the 1992 general presidential election, and intends to caucus in the 1996 caucuses and vote in the 1996 general presidential election.

10. Plaintiff Joseph P. Tartaro, 267 Linwood Ave., Buffalo, NY 14209, is a citizen of the United States, registered voter in the state of New York, and taxpayer to, among other governmental entities, the U.S. government. Tartaro is a registered Democrat and voted in the 1992 presidential primary and general elections. Tartaro intends to vote in the 1996 presidential primary and general elections.

11. Plaintiff Second Amendment Foundation, 12500 Northeast Tenth Place, Bellevue, WA 98005, is a tax-exempt public charity organized and operated to educate the American public on the issues impacting the Constitutional right to bear arms and other issues. It and its contributing members have an organizational interest in the fiscal responsibility of the federal government, misuse of tax funds, government waste, and the effectiveness of the functioning of government. The Foundation is exempt from

taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

- 12. Plaintiff Center For the Defense of Free Enterprise, 12520

  Northeast Tenth Place, Bellevue, WA 98005, is a tax-exempt public charity organized and operated to educate the American public on the issues impacting free enterprise in the United States. It and its contributing members have a specific interest in the fiscal responsibility of the federal government, misuse of tax funds, government waste, and the effectiveness of the functioning of government. The Center is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
- 13. Plaintiff American Political Action Committee ["AmeriPAC"], POB 1682 Bellevue, WA 98009, is a political committee organized and operated to promote the candidacies of individuals whose position on the issues promotes the individual civil liberties of all Americans and has a specific interest in promoting honest and lawful campaign conduct by candidates. AmeriPAC is a multicandidate political committee registered with the Federal Election Commission. AmeriPAC and its contributors have an organizational interest in equal access to campaign finance for all candidates, prevention of any candidate receiving unfair

campaign advantage through violation of election laws and in fair and competitive elections administered with the same rules and regulations for all candidates.

14. Defendant FEC is the agency of the United States government empowered with exclusive primary jurisdiction to administer, interpret and enforce the FECA, see generally 2 U.S.C. § 437c (b) (1), 437d (a) and 437g, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9001 et seq ("Primary Matching Act").

#### OTHER PERSONS AND ENTITIES

- 15. William J. Clinton was a candidate in the 1992 primary and general elections and was elected President of the United States in 1992. Upon information and belief, President Clinton will seek reelection to that office in 1996 and will be a candidate in the 1996 primary and general election.
- 16. The Primary Committee was the principal campaign committee of President Clinton for the 1992 primary election. Upon information and belief, Robert A. Farmer and Bruce R. Lindsey were the treasurers of Clinton's Primary Committee at the time the committee filed with the FEC in 1992, and J.L. Skip Rutherford, is the current treasurer.

- 17. The Clinton/Gore '92 Committee ["General Election Committee"] is the principal campaign committee of Clinton for the 1992 general election. Upon information and belief, Robert Farmer was the treasurer of the General Election Committee at the time the committee filed with the FEC in 1992 and J.L. Skip Rutherford, is the current treasurer.
- 18. The GELAC was the committee for the general election operated to maintain compliance with federal election laws by Clinton's General Election Committee.

#### STATUTORY AND REGULATORY BACKGROUND

#### SUBSTANTIVE PROVISIONS

- 19. The Primary Matching Act provides that a candidate is entitled to matching funds for each matchable contributions except that a candidate who has become ineligible may not receive further matching payments regardless of the date of deposit of the underlying contributions if he has no net outstanding campaign obligations. 11 C.F.R. § 9034.1(a).
- 20. 11 C.F.R. § 9034.1 (b) states that if on the date of ineligibly a candidate has net outstanding campaign obligations ["NOCO"], as defined under 9034.5, that candidate may continue to received matching payment for matchable contributions received and deposited on or before December 31 of the Presidential

election year provided that on the date of payment there are remaining net outstanding campaign obligations.

- 21. Net outstanding campaign obligations are the difference between the total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligible plus estimate necessary winding down costs, less cash on hand as of the close of business of the also day of eligibility, including all contributions dated on or before the date whether or not submitted for matching. 11 C.F.R. § 9034.5.
- 22. Within 15 days after a candidate's date of ineligibility, the candidate shall submit a NOCO statement. 11 C.F.R. § 9034.5(a).

  The NOCO statement will reflect the candidate's financial status as of the date of ineligibility and it will show whether the candidate has net outstanding campaign obligations. Explanation and Justification for Regulation Presidential Primary Matching Funds, 46 Fed.Reg. 5229 (Feb. 4, 1983).
- 23. Each treasurer of a political committee shall file reports of receipts and disbursement for such committee. 2 U.S.C. §
  434(a)(1). Each treasurer of a political committee, and any other person required to file any report or statement under the FEC's regulations, shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy

of any information or statement contained in it. 11 C.F.R. § 104.14 (d). Such reports and statement include NOCO Statements. Explanation and Justification for Regulations Presidential Primary Matching Funds, 46 Fed.Reg. 20670 (June 3, 1987). 24. In order to be eligible to receive public finds for the general election, a major party candidate must certify to the Commission that he or she will not accept private contributions to defray qualified campaign expenses. 26 U.S.C. § 9003(b)(2). However, a major party candidate may establish a legal and accounting compliance fund and accept private contributions into the fund if such contributions are received and disbursed in accordance with 11 C.F.R. § 9003.3. Pursuant to 11 C.F.R. § 9003.3 (a)(1)(ii) private contributions received during the matching payment period that are remaining in the primary committee's accounts which are in excess of any amount needed to pay primary expenses or repay the Presidential Primary Matching Payment Account, may be transferred to the legal and accounting compliance fund without regard to contribution limits. 25. Contributions that are made after the beginning of the expenditure report period and are designated for the primary election, but which exceed the contribution limitation for the primary election, however, may be transferred to and deposited in the legal and accounting compliance fund if the candidate obtains the contributor's redesignation in accordance with 11 C.F.R. § 110.1. 11 C.F.R. § 9003.3 (a) (1) (iii).

- 26. Pursuant to 11 C.F.R. § 110.1(b)(4)(I)-(iii), a contribution shall be considered to be designated in writing for a particular election if: (1) the contribution is made by check, money order, or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made; (2) the contribution is accompanied by a writing, signed by the contributor, which clearly indicates the particular election with respect to which the contribution is made; or (3) the contribution is redesigned in accordance with 11 C.F.R. § 110.1(b)(5).
- 27. Contributions that do not exceed the contribution limits for the primary election may be redesignated and deposited in a legal and accounting compliance fund only if: (1) the contributions represent funds in excess of any amount needed to pay remaining primary expenses; (2) the redesignation are received with 60 days of the treasurer's receipt of the contribution; (3) the requirements of redesignation rules have been satisfied; and (4) the contributions have not been submitted for matching. 11 C.F.R. § 9003.3(a)(1)(iii)(A)-(D).

# HOW THE ACTION OF PRESIDENT CLINTON AND THIS COMMITTEES VIOLATED THE CAMPAIGN ACT AND THE FUND ACT

28. As a result of his nomination on July 15, 1992 as the Democratic candidate for President in the general election, President Clinton became ineligible to receive additional matching funds for his primary campaign except for winding down expenses. The Primary Committee had a NOCO, or deficit, of \$8,303,280 and was required to use private contributions to pay its primary expenses before it could transfer or redesignate any private contributions to the Compliance Fund.

29. Instead of applying the private contributions to the NOCO, the Primary Committee transferred and redesignated \$1,419,153 to the Compliance Fund after the date of ineligibility and during a time in which there were primary expenses. The transfer was in violation of 11 C.F.R. § 9003 (a) (1) (iii) because the private contributions should have been applied to the primary expenses.

30. The \$1,419,153 in contributions transferred to the Compliance Fund were contributions designated by the donors to the primary election since they were made payable to "Clinton for President" or a similar entity, and were solicited, received, deposited and reported by the Primary Committee when it had net outstanding

campaign obligations.

- 31. The net outstanding campaign obligations on the NOCO statements of the Primary Committee resulted solely from the transfer of private contributions to the Compliance Fund. If the primary committee had not transferred out the \$ 1,419,153 there would not have been net outstanding campaign obligations.

  32. President Clinton, the Primary Committee, its Treasurer submitted NOCO Statements that did not accurately reflect the Committee's outstanding obligations and assets in violation of 11 C.F.R. § 104.14(d).
- 33. Instead they submitted its NOCO Statements reflecting net outstanding obligations which they should have used the private contributions to satisfy. The private contributions instead were transferred to the Compliance fund.
- 34. Upon information and belief, President Clinton, The Primary Committee, and its treasurers knowingly and transferred private funds to the Compliance Fund when there was a deficit, submitted to the inaccurate NOCO statements, and applied the private contributions to the Compliance Fund for the General Election. These actions resulted in over a \$3 million unfair campaign finance advantage over the opposing candidate in the general presidential election. The Primary Committee received, according the FEC Audit Department, over \$3 million in public funds to

which it was not entitled in violation of 26 C.F.R. § 9034 by virtue of this diversion of funds to the Compliance Fund.

35. The duty to not obtain public finds for which a candidate is ineligible and to submit NOCO Statements that are as accurate as possible is vital to the American public financing system and fair and competitive elections and the ultimate integrity of the office of President.

#### FEC COMPLIANCE PROCEDURE

- 36. Section § 437g(a)(1) provides that any person who believes that a violation of the FECA or the Fund Act has occurred may file a complaint with the FEC. Plaintiffs filed their administrative complaint pursuant to this provision.
- 37. 2 U.S.C. § 437g(a)(2) provides that, if the FEC, upon receiving a complaint, determines by a vote of four of its six members that it has "reason to believe" that a person has committed or is about to commit a violation of the FECA or the Fund Act, the FEC shall conduct an investigation into the allegations contained in the complaint.
- 38. 2 U.S.C. § 437g(a) (4) (A) (I) provides that, if the FEC, by a vote of four of its six members, determines after such investigation that there is "probable cause" to believe a person violated the FECA or the Fund Act, the FEC shall attempt to reach

a conciliation agreement. Under 2 U.S.C. § 437g(a)(6)(A) if the FEC fails to reach such a conciliation agreement, it may, upon a vote of four of its members, institute a civil action for relief against that person.

39. 2 U.S.C. § 437g(a)(8)(A) provides that any person aggrieved by an order of the FEC dismissing a complaint filed by such party under 2 U.S.C. § 437g(a)(1) may file a petition with the United States District Court for the District of Columbia. 2 U.S.C. § 437g(a)(8)(C) provides that this Court may declare the dismissal contrary to law and may direct the FEC to conform with such declaration within 30 days.

#### PROCEEDINGS BEFORE THE FEC

40. The FEC General Counsel on July 27, 1995 recommended that the Commission find reason to believe that President Clinton, the Primary Committee, and J.L. "Skip" Rutherford, as treasurer, the GELAC, and J.L. "Skip" Rutherford, as treasurer, violated 11 C.F.R. § 9003.3 (a) (1), and that President Clinton, the Primary Committee, and J.L. "Skip" Rutherford, as treasurer, violated 11 C.F.R. § 104.14 (d) and 9034.5 (a).

41. On August 16, 1995 the FEC considered the plaintiffs' administrative complaint and its General Counsel's recommendation

but was equally divided on whether to find reason to believe that President Clinton, the Primary Committee, and J.L. "Skip" Rutherford, as treasurer, the GELAC, and J.L. "Skip" Rutherford, as treasurer, violated 11 C.F.R. § 9003.3 (a) (1), and that President Clinton, the Primary Committee, and J.L. "Skip" Rutherford, as treasurer, violated 11 C.F.R. § 104.14 (d) and 9034.5 (a).

42. Three Commissioners voted against a determination that the transfer of \$1,419,153 from the Primary Committee the Compliance Fund was not in accordance with 11 C.F.R. § 9003.3(a)(1)(iii) for two primary reasons. First, these Commissioners reason such a finding of a violation of 11 C.R. R. § 9003.3 (a)(1) conflicts with the finding of the Commission's Audit Report in the Clinton Primary Committee and that the factual and legal determination which the Commission previously made in the First Audit Report are binding upon the Commission's action in MUR 4192. Second, these Commissioners concluded that the these contributions were not designated to the primary election and could not trigger a violation of 11 C.F.R. § 9003.3(a)(1)(iii). These Commissioners constitute the controlling group since the Commission requires 4 affirmative votes to made a final determination and state the

4192.

FEC's reasons for its actions in dismissal of MUR 4192.

43. Three other Commissioners adopted their statement of reasons in the Audit Report that considered similar, but different, issues than raised in the instant action, and concluded that their three colleagues' failure to vote in favor of a violation of 11 C.F.R. § 9003.3(a)(1)(iii) could only be considered "arbitrary and capricious and contrary to law."

## HOW THE FEC'S DISMISSAL VIOLATED THE FECA AND THE APA

45. The FEC's dismissal of plaintiff's administrative complaint action was contrary to law within the meaning of 2 U.S.C. § 437g(a)(8), and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, with the meaning of 5 U.S.C. § 706, because factually the Commission did not make a determination in the Final Audit as implied by the controlling group of FEC Commissioners that the transfer of the \$1,419,151 from the Primary Committee to the Compliance Fund was in accordance with 11 C.F.R. §9003.3(a)(1) and if the Commission did so find, the finding was inconsistent with 11 C.F.R. §9003.3(a)(1) and FECA, and the failure of the FEC to make a

final determination on an issue due to a 3-3 deadlock vote does not preclude the FEC from making a different determination under 2 U.S.C. § 437g at a subsequent time, including a determination that the conduct at issue constitutes a civil violation of FECA. 46. The FEC's dismissal of plaintiff's administrative complaint action was contrary to law within the meaning of 2 U.S.C. § 437g(a)(8), and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, within the meaning of 5 U.S.C. § 706, because the Primary Committee in violation of 11 C.F.R. §9003.3 (a)(1) transferred funds to the Compliance Fund when primary debts remained. The controlling group of Commissioners misinterpreted the application of 11 C.F.R. §9003.3 as to the \$ \$1,419,151 transferred by not requiring it to be applied to the NOCO and by permitting the Primary Committee to arbitrarily designate some but not all such contributions to be used to repay the NOCO so the campaign could maximize its campaign resources in the general election. The FEC's interpretation is contrary to its own regulations, FECA and precedent.

47. The FEC's dismissal of plaintiff's administrative complaint action was contrary to law with the meaning of 2 U.S.C. §

437g(a)(8), and was arbitrary, capricious, and abuse of discretion, and otherwise not in accordance with law, with the meaning of 5 U.S.C. § 706, because the Commission failed to find a misleading NOCO Statement understating campaign assets was submitted to the Commission in violation of 11 C.F.R. § 104.14 (d) and 9034.5 (a) and misapplied these regulations in such a determination.

48. The FEC's dismissal of plaintiff's administrative complaint action was contrary to law with the meaning of 2 U.S.C. § 437g(a)(1), and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, with the meaning of 5 U.S.C. § 706, because the FEC failed to find the Primary Committee received public funds to which it was not entitled in violation of 26 U.S.C. §§ 9034 and 9037 when it diverted primary funds to the general election compliance fund.

#### PRAYER FOR RELIEF

WHEREFORE, the plaintiffs respectfully request that this Court:

A. Declare contrary to law defendant FEC's dismissal of plaintiffs' administrative complaint that William J. Clinton, The Clinton For President Committee, and its Treasurers, and the

GELAC and its Treasurers violated 11 C.F.R. § 9003.3(a)(1);

B. Declare arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law defendant FEC's dismissal of plaintiff's administrative complaint that President William J. Clinton, The Clinton For President Committee, and its Treasurers, violated 11 C.F.R. §§ 104.14(d) and 9034.5(a);

- C. Declare arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law defendant FEC's dismissal of plaintiff's administrative complaint that President William J. Clinton, The Clinton For President Committee, and its Treasurers, and GELAC and its Treasurers violated 11 C.F.R. §§ 9034.5(a) and 9037;
- D. Issue an order directing defendant FEC to act in conformance with the Court's decision within 30 days after such decision;

  E. Award plaintiffs reasonable costs and attorney fees pursuant

to 28 U.S.C. § 2412; and,

F. Grant such other relief as the Court may deem just.

Respectfully submitted,

October 10, 1995

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Of counsel: Robert Ricker

atty listed as Richard Mayberry NoT Harold

#### Anderson Report - Tab 23

23001-23043: Utrecht's Response (July 1994) to the FEC's Interim Audit Report

23044: Blank

23045-23054: Utrecht/Laura Ryan Shachoy repeat false statements to FEC in MUR.

Note significant false statements in Utrecht's Response:

Page 3/23003: Note gratuitous and false statement regarding Pat Anderson's failure to reconcile her records.

Page 3/23003: Note gratuitous and false statement regarding significant difficulties the CPC was experiencing with its vendor, the Andersons' firm.

Page 7/23007: Note Utrecht vigorously defends another of the CPC vendors.

Page 8/23008: Note Utrecht states bookkeeping errors are unavoidable and are to be expected in the normal course of business; again, in defense of another CPC vendor (but not the Andersons' firm).

Page 31/23031: Note Utrecht states \$37,500 in payments to Kathlyn Graves were for administrative costs associated with winding down the campaign. Months later it is discovered that the payments were to a campaign worker to keep quite about an alleged sexual harassment episode involving David Watkins. Refer to Tab 18 for more information.

Page 40/23040: Note Utrecht's false statement that the Andersons firm sought and obtained unnecessary redesignation statements for financial gain, without the knowledge of the CPC, apparently for the financial gain involved.

Page 41/23041: Note Utrecht states the redesignation statements "obtained by the Committee's vendor" are superfluous.

Page 41/23041: Note Utrecht claims the \$2,444,557 transferred to the Compliance fund was the result of an "analysis" by the CPC -- she failed to mention to the FEC the batches of redesignation statements shown in Tab 14 (document series 14000).

Page 42/23042: Note Utrecht suggests that slow processing of contributions kept the Clinton campaign from getting all it deserved in matching funds.

23045-23054/B Utrecht and Shachoy's Response (April 1995) to MUR 4192

Page 7/23051: Note Utrecht's original false statement about the Andersons' firm seeking and obtaining the redesignation statements is repeated.

#### JULY 6, 1994

# RESPONSE OF CLINTON FOR PRESIDENT COMMITTEE TO THE INTERIM REPORT OF THE AUDIT DIVISION

This response is filed on behalf of Clinton for President Committee (the "Primary Committee" or "Committee") to the Interim Report of the Audit Division ("Interim Report", or "Report"). The Committee's response is numbered according to the proposed findings of the Audit Division as set forth in the Interim Report. For the Commission's convenience we have also included a summary of the major issues contained in the Report and a guide to the Committee's responses thereto.

#### I. Summary

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There are several issues raised in the Interim Report that merit special attention by the Commission because they each have a significant impact on the Committee's NOCO or repayment obligation.

The auditors' recommendation that the General Committee should reimburse the Primary Committee for the full cost of \$540,313 of equipment purchased by and used by the Primary Committee is directly contrary to the Commission's regulations at C.F.R. § 9034.5(c)(1), and its adoption would improperly decrease the Primary Committee's entitlement by \$254,390<sup>1</sup>. See Section III.B.2.a. below.

The auditors' recommendation that polling costs of \$202,525 incurred prior to the Primary date of ineligibility should be reimbursed by the General Committee is unsupported by the Commission's regulations, inconsistent with prior Commission actions, and its adoption would improperly decrease the Primary Committee's entitlement by \$202,525. See Section III.B.2.b. below.

The auditors' recommendation that a joint primary fulfillment/compliance fund solicitation should have been allocated 50/50 instead of 85/15, as reasonably allocated by the vendor, is factually and legally unsupported, and its adoption would result in an improper decrease of \$130,823 in the Primary Committee's entitlements See Section III.B.2.b. below.

<sup>&</sup>lt;sup>1</sup>This amount is further increased in the Interim report by an additional \$79,808 for related wiring.

The auditors' recommendation that the costs of the biographical film introducing Bill Clinton to the Convention should have been paid by the General Committee is contrary to the Commission's regulations at 11 C.F.R. §§ 9032.9(a), 9033.5(c), 9032.6(a), inconsistent with prior Commission actions, and its adoption would improperly decrease the Primary Committee's entitlement by \$161,273. See Section III.B.2.c. below.

The auditors' recommendation that the General Committee should reimburse the Primary Committee \$60,4320 for pamphlets printed for use in the primary and not used in the general is contrary to the Commission's regulations at 11 C.F.R. §§ 9032.9 and 9034.5(c)(1), and its adoption would improperly decrease the Primary Committee's entitlement by \$60,420. See Section III.B.2.d. below.

The auditors' recommendation that \$237,750 in bonuses paid to campaign staff and consultants were not qualified campaign expenses is contrary to the facts, the regulations and prior Commission precedent, and if adopted would improperly decrease the Committee's entitlement and increase the Committee's repayment. See Section III.B.3.b. below.

The auditors' recommendation that \$179,357 in traveler's cheques purchased and used by the Committee for advance staff per diems were not qualified campaign expenses is contrary to the regulations, inconsistent with Commission treatment of traveler's cheques as permissible contributions, and if adopted would improperly decrease the Committee's entitlement and increase the Committees' repayment. See Section III.B.3.c. below.

The auditors' recommendation that the Compliance Fund must reimburse the Primary Committee for \$1,296,517 is contrary to the Commission's regulations at 11 C.F.R. § 110.1(b) and § 9003.3(a)(1)(iii), and its adoption would result in an improper decrease of \$1,296,517<sup>2</sup> in the Primary Committee's entitlement. <u>See</u> Section III.D. below.

The Committee's arguments on these issues are set out fully below and supported by additional documentation and testamentary evidence. Even a cursory glance at these issues strongly suggests that the auditors' efforts in these audits were to seek out specific disbursements made by the Frimary and create arguments as to why these items should have been paid by the General Committee, for the sole purpose of decreasing the Primary Committee's entitlement and creating an artificially high primary repayment.

#### II. Findings and Recommendations - Non-repayment Matters

# A. Misstatement of Financial Activity

The auditors found discrepancies in the Primary Committee's beginning

<sup>&</sup>lt;sup>2</sup>This number could be as high as \$2,444,557. See Section III.D. below.

balance, receipts, disbursements and ending balance, all of which were materially corrected by amendments filed on July 2, 1993. These misstatements were essentially due to errors by one of the Committee's computer vendors who failed to reconcile her records to the accounting data and bank reconciliation provided to her by the Committee's accounting department.

No further action or response is necessary.

#### B. Itemization of Receipts

The auditors performed a sample review of Primary Committee contributions and apparently identified 26 contributions that were not itemized as required. On the basis of this sample, the auditors projected that 8% of the Committee's individual contributions that required disclosure were not itemized.

On July 2, 1993, the Primary Committee filed amended reports which materially corrected the itemization omissions identified by the auditors and therefore no further action is recommended in the audit report. However, the Committee notes that it does not agree with the auditors' results projecting itemization errors of 8%. The Committee further notes that many of the errors occurred during June, July and August of 1992. During this period, the Committee experienced significant difficulties with the vendor preparing the Primary Committee's reports.

# C. Disclosure of Occupation and Name of Employer

The auditors performed a sample review of Primary Committee contributions for occupation and employer information. On the basis of this sample, the auditors project that 49% did not have the required information. However, the auditors recommend no further action since the Committee sent an additional mailing in November 1992, requesting information from contributors who had not previously provided it. The additional contributor information was disclosed in amended reports filed in July 1993. Although no further action is recommended, the Committee disagrees with this finding.

The Committee contends that best efforts was satisfied prior to the November 1992, mailing. All of the Committee's solicitations included contributor cards requesting complete contributor information in compliance with the applicable language in 11 C.F.R. § 104.7. Exhibit 1 contains sample Primary contributor cards. Under the regulations in effect in 1991, to 1993, the Committee satisfied the "best efforts" requirement if it made one written request per solicitation. Since all Committee solicitations were accompanied by contributor cards requesting this information, the Committee's solicitations fully satisfied this requirement.

#### D. Itemization of Refunds and Rebates

The Interim Report contends that the Primary Committee was required by 2 U.S.C. §



434(b)(3)(F) to itemize each reimbursement received by Worldwide Travel for press and secret service travel. The Committee contends that it properly disclosed these reimbursements as received from Worldwide Travel and that further itemization is not required by the Act, regulations or other Commission precedents.

2 U.S.C. § 434(a) requires committees to file reports of receipts and disbursements. Generally, all reporting under the Act, other than debts and obligations is on a cash basis. The Commission has addressed a virtually identical issue to this one as to disbursements made by presidential committees. In AO 1983-25, the Commission concluded that the itemization of disbursement requirements were met when a publicly financed campaign reported payments to its media vendor, and further hold that the Committee was not required to itemize payments subsequently made by the vendor on behalf of the committee. Thus, although committee vendors are required to maintain documentation of disbursements made to subvendors on behalf of a committee, the committee is not required to report or itemize such disbursements. The collection and receipt of reimbursements through a third party vendor is indistinguishable from the situation in AO 1983-25.

11 C.F.R. § 104.3(a)(4)(v) requires only that a committee identify each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year. The Committee satisfied that requirement by reporting the receipt of press and secret service reimbursements from Worldwide Travel which was operating as a vendor to the Committee in billing and collecting press and secret service reimbursements. All records pertaining to these collections were made available for audit as in AO 1983-25. The reporting requirements, however, were fully met by reporting the receipts from Worldwide. As in AO 1983-25, the Primary Committee's travel vendor was a distinct legal entity which entered into an arm's length commercial arrangement with the Committee. Worldwide Travel was neither set up by the Primary Committee, nor was the Primary Committee its only client. It is and was an ongoing travel business.

The Committee sought informal advice from the audit staff regarding whether these reimbursements must be itemized and was advised that they need not be. We believe that advice was fully consistent with the requirements of § 434(b)(3)(f), § 104.3(a)(4)(v) of the regulations and AO 1983-25. The Committee believes that the auditors are now taking the position that the Worldwide reimbursements must be itemized simply because most committees have collected these refunds themselves and have not used a third party vendor to collect press and secret service reimbursements.

Although, the Primary Committee believes that its reporting was in full compliance with the requirements of the Act, the Committee has prepared amendments as directed by the auditors itemizing the receipts from each press and secret service entity to the extent possible. This process was extremely time-consuming and costly as the computer records to prepare the amendments had to be reconstructed. Since the Committee was operating under the

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assumption that it did not have to itemize this information, the information was not maintained in a computer format that made it readily available for itemization. The Committee shall provide copies of the revised schedules that have been prepared itemizing this information. The amendments will be filed as soon as the revised summary pages and any other necessary amendments are completed.

# E. Apparent Excessive Contributions from Staff and Other Individuals

The Interim Report alleges that seven persons made excessive advances to the Primary Committee amounting to an aggregate total of \$75,100, as a result of allegedly untimely reimbursement of expenses incurred on behalf of the Committee. As the Committee stated at the audit exit conference, each of the situations questioned by the auditors arose under different circumstances, the auditors have incorrectly categorized them as excessive and untimely reimbursements, and the audit analysis overstates the amounts of any advance.

Of the seven persons identified by the auditors, four<sup>3</sup> were Committee staff and three were unpaid consultants to the Committee providing services. As to the staff members, the auditors' computer print-out provides a cumulative total of all expense reimbursements received by the individuals without identifying those which were for personal transportation and subsistence. When the personal transportation and subsistence expenses have been subtracted from the analysis, the contribution figures are dramatically different. The Committee has prepared a correct analysis accounting for all permissible advances and reimbursements for transportation and subsistence expenses<sup>4</sup>. Exhibit 2.

The other three individuals were permitted under the Act and regulations to extend credit to the Committee under the ordinary course of business because as unpaid consultants they were unincorporated vendors to the campaign under 11 C.F.R. § 116.3. Each of the individuals involved volunteered their uncompensated services to the Committee and billed the Committee for the costs incurred in connection with providing those services to the Committee. Each of the individuals involved has substantial fundraising background and expertise and thus may be considered an unincorporated commercial vendor. Nothing in the Act or regulations prohibits vendors from volunteering their uncompensated personal services to a committee and charging the Committee for the actual expenses incurred. Under 11 C.F.R. § 100.7(b)(3), the value of services provided without compensation by any individual

<sup>&</sup>lt;sup>3</sup>One (Harold Ickes) was a volunteer consultant until May, 1992, after which he went on the Primary Committee's payroll. The Committee's analysis reflects the change in his status.

<sup>&</sup>lt;sup>4</sup>The auditors' analysis of David Wilhelm is skewed by the inclusion of \$6,000 which the Committee decided to reimburse him for the expenses of his apartment. It would have been permissible for him to pay these expenses without reimbursement, but it was also permissible for the Committee to reimburse him. The timing of this reimbursement is legally immaterial.

who volunteers on behalf of a candidate or committee is not a contribution. There is nothing in § 116.3 regarding extensions of credit by unincorporated entities that precludes an individual who is providing services to a committee from volunteering his or her own services, but billing the Committee for all other costs incurred. Ken Brody, Shelia Davis Lawrence (whose expenses were reimbursed to her trust, M.L. Lawrence Trust), and Erskine Bowles were fundraising consultants to the Committee. Just as other consultants incurred expenses in the course of providing services to the Committee and received reimbursements, so did these persons.

The Commission's advisory opinions clearly permit after the fact reimbursement for expenses incurred under such circumstances. See, e.g., AO 1979-22 (permitting presidential campaign to reimburse for the expenses incurred by shared counsel in preforming non-compliance legal and political services to the campaign). Similarly, the Commission has permitted reimbursement of costs after the fact to artists volunteering their services in creating artwork for committees. See AO 1980-34.

# F. Extensions of Credit by Commercial Vendors

The Interim Report identifies fourteen vendors as "11 C.F.R. § 116.3 Problems." After a lengthy summary of the regulations at §§ 116.3 and 114.9, the auditors state that these vendors "generally did not appear to be billing for anything above their costs." This conclusion is followed by a summary of the facts of each situation which does not provide any legal analysis as to what is the specific alleged violation by each vendor. As described more fully below and supported by the attached documentation and affidavits, each of the situations identified by the auditors was in compliance with the Commission's regulations. As the attached detailed documentation clearly demonstrates, all activity by the noted vendors was in accordance with 11 C.F.R. §§ 116.3 and 114.9.

The Act and Regulations require that for unincorporated and incorporated commercial vendors an extension of credit is permissible if extended in the ordinary course of business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. The Commission in 11 C.F.R. § 116.3(c) has stated that the Commission will consider the following factors when determining whether credit was extended in the ordinary course of business: 1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; 2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and 3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

As the attached documentation regarding commercial vendors confirms, the billing process for each commercial vendor was within its normal and ordinary course of business in accordance with 11 C.F.R. § 116.3. Accordingly, there was no extension of credit outside the normal course of business. The Act, Regulations and advisory opinions provide no set time

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standard for payment, but only require that billing be handled in the vendor's normal and ordinary course of business. The fact that the law provides no defined time limit necessarily acknowledges that different industries and trades operate with widely varying billing practices both in terms of how costs are billed and the timing of such billing.

In addition, it is clear that vendors dealing with political campaigns, in an effort to fully comply with the election laws, take the time necessary to ensure that all charges are properly accounted for and are billed at the appropriate amounts. To penalize these vendors who take the extra time and care to ensure compliance with the election laws would be ludicrous. Moreover, the Audit Staff's questioning and unreasonable pursuit of the abovenoted vendors' billing is not only manifestly contrary to clear legal and factual authority demonstrating compliance with 11 C.F.R .§§ 116.3 and 114.9, but also serves to defeat wellestablished Congressional and Commission objectives to streamline, simplify and shorten the audit process. In addition, it forces the Committee to expend valuable resources to respond to issues which clearly do not constitute prohibited contributions or extensions of credit outside the normal course of business either under the letter or the spirit of the law. For instance, the Audit staff has included in its analysis of extensions of credit, situations involving obvious clerical and bookkeeping mistakes which were rectified by the Committee and vendor prior to Commission action. To penalize the Committee for rectifying administrative and clerical errors, penalizes the Committee for making a good faith effort to voluntarily comply with the law and accordingly undermines one of the basic tenets of federal election law.

In connection with the use of corporate facilities, the Regulations requires that a stockholder or employee who makes more than occasional, isolated or incidental use of a corporation's facilities for individual volunteer activities in connection with a Federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge, as defined in 11 C.F.R. § 100.7(a)(1)(iii)(B), for the use of such facilities. 11 C.F.R. § 100.7(a)(1)(iii)(B) states that "usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; and the usual and normal charge for any services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered." Similarly, other persons who make use of corporate facilities must reimburse within a commercially reasonable time in the amount of usual and normal charge, 11 C.F.R. § 114.9(d).

Importantly, neither the Act, Regulations or advisory opinions set any time limit as a standard for reimbursement and provide only that reimbursement be made within a "commercially reasonable time". Moreover, the Commission has itself acknowledged that "[in situations where billings are required to occur by entities which do not routinely bill for services rendered it is often difficult to define a commercially reasonable time." General Counsel's Report - MUR 1641. Accordingly, for those vendors that do not routinely bill for goods and services, it is only logical that the billing process could take longer. To penalize a

vendor for taking the necessary time to ensure that all costs are properly billed so a comply with 11 C.F.R. §§ 116.3 and 114.9 would be senseless. In MUR 1641, the Common concluded, therefore, that when the Commission's investigation focuses upon recent ongoing activity it is necessary to look at whether the billing occurred only as a result of the Commission's findings. In every instance questioned by the auditors as to Primary Committee vendors, the billing took place prior to the auditors' review.

For those vendors operating as commercial vendors, the attached affidavits unquestionably demonstrate that their respective billings were handled in the normal and ordinary course of their business. In those situations involving the use of corporate or labor organization facilities, the attached affidavits prove that all billings were handled in a commercially reasonable time in accordance with 11 C.F.R.§§ 114.9 and 110.7(a)(iii)(B).

In several instances, the vendors inadvertently made bookkeeping errors in the billing process. The Audit Staff would like to treat these inadvertent errors as intentional extensions of credit outside the normal course of business in violation of the Act despite legal and factual authority to the contrary. Inadvertent bookkeeping errors are unavoidable in the operation of any business and, therefore, are within the normal and ordinary course of business. Moreover, in each instance, the attached affidavits demonstrate that the vendors clearly intended to comply with the law by providing evidence of a signed contract, or reasonable explanations such as obvious bookkeeping errors, later discovered and immediately rectified. Most importantly, the vendors and Committee rectified these errors assoon as discovered. To penalize vendors and the Committee where inadvertent mistakes were made and immediately rectified upon discovery would seriously undermine the Commission's mission to encourage voluntary compliance. In fact, it would discourage parties from rectifying innocent errors.

A summary of each 116.3 issue follows.

Hellring Lindeman Goldstein & Siegal - As the attached affidavit demonstrates, all aspects of Hellring Lindeman's billings including the timing of the issuance of invoices and payment by the Committee were handled within its ordinary course of business. Hellring Lindeman's followed its usual, customary and established billing procedures and its treatment of the Committee was wholly consistent with the manner in which it billed many other clients. In addition, to ensure compliance with applicable election laws, Hellring Lindeman took special care to ensure that all charges were properly accounted for and billed. Exhibit 3.

Goldman Sachs - The Audit Staff has questioned the timing of billing by Goldman Sachs & Co. ("Goldman Sachs") to the Committee for the rental of office space and miscellaneous expenses in the amount of \$16,295 as possible extensions of credit outside the normal course of business. The Act, Regulations and advisory opinions provide no set time limit for billing and payment for the use of facilities but only require that reimbursement be obtained within a commercially reasonable time. As the attached affidavits clearly prove, the timing of Goldman Sachs' billing was done within a commercially reasonable time. Exhibit 4.

As the affidavits confirm, in all billings for the Committee, Goldman Sachs followed its usual and established administrative procedures in accounting for, accumulating, verifying and billing charges to the Committee. Moreover, the processing and billing of all the disbursements were within the customary and usual time periods for such expenses. According to Goldman Sachs, the billing process for third parties normally may take anywhere from several months to more than one year from the time that expenses are actually incurred.

In connection with the use of office space by Mr. Carey, in order to assure that all charges were properly accounted for and billed to the Committee, Goldman Sachs billed the Committee in a commercially reasonable time, consistent with Goldman Sachs' customary practices, after Mr. Carey vacated the office space. Mr. Carey only occupied the otherwise vacant office on various days in October and November, 1991, and such office space was not used by Mr. Carey on a daily basis. Mr. Carey vacated the office space in or about November, 1991, and Goldman Sachs, following its usual and established procedures, promptly proceeded to review and confirm the accuracy of all charges to the Committee in connection with the occasional use of the office. In February 1992, Goldman Sachs issued an invoice to the Committee for the use of office space and related expenses. The Committee paid the invoice in full within 60 days of the issuance of such invoice. As Goldman Sachs attests, both the timing of the billing and the timing of the payment are well within its customary timeframe for billing and receiving payment for similar expenses by third-parties.

Similarly, Goldman Sachs recorded and billed the Committee for car service expenses during the periods ended February 13, 1992, and March 18,1992, in Goldman Sachs' routine manner and within its normal time periods, as Goldman Sachs attests. Finally, the Committee was billed consistent with Goldman Sachs' normal commercial practice for the breakfast at Goldman Sachs, as the same affidavit also explains. The Committee promptly paid each of these bills as well. In sum, Goldman Sachs handled these expenses consistent with the normal course of its business and therefore has not extended credit to the Committee within the meaning of the statute.

Sun Building Associates - The affidavit of Charles Trainum, attached hereto, confirms that Sun Building Associates did not extend credit to the Committee outside the normal course of business. Exhibit 5. The Committee entered into a verbal agreement with the Committee for short-term use of the space located in 1317 F Street, N.W., Washington, D.C. In addition, all aspects of the billing process were handled within the normal course of its business. It is not uncommon for the first bill to a new tenant to be delayed for several months while the initial processing takes place. In fact, the Partnership presently leases space to a non-political tenant on identical terms to the arrangement with the Committee. This tenant also occupied its space for several months before being billed. Moreover, after issuance of the Committee's bill and failure of the Committee to pay such bill, Sun Building Associates referred the matter to its attorneys for immediate collection action. Accordingly,

all dealings between Sun Building Associates and the Committee were within the no all and ordinary course of the Partnership's business and accordingly do not constitute a probited contribution.

Manatt. Phelps & Phillips - The auditors have questioned the billing of the Committee in the amount of \$120,192 as a possible extension of credit outside the normal course of business. However, payment by the Committee in July, 1992, did not constitute an extension of credit outside the normal course of business. Manatt, Phelps & Phillips, like most law firms, frequently bills clients at the end of a project. Manatt, Phelps cites many types of matters in which it bills non-political clients at the conclusion of a project. This is often necessary because it takes time to receive and process invoices from other providers and vendors which the firm utilizes to provide services to clients. In addition, in the case of the Committee, extra time and care was taken to ensure that all costs were properly accounted for and billed at the appropriate level in order to fully comply with applicable election laws. The Committee received bills from Manatt, Phelps on July 8, 1992, and paid such bills promptly thereafter.

As the attached affidavit from Judith Cunningham clearly demonstrates, all aspects of the Committee's billings were handled in the ordinary course of business and the Committee was treated in a manner totally consistent with the firm's treatment of other non-political clients. Exhibit 6. Accordingly, the timing of the billing by Manatt, Phelps and receipt of payment was in accordance with 11 C.F.R. § 116.3, and did not constitute an extension of credit outside the normal course of business.

Sutherland Company - The auditors have questioned the billing of \$29,298 by Sutherland Company as a possible extension of credit outside the normal course of business. The auditors' assertions are erroneous. Sutherland Company is a political consulting and public relations firm. Accordingly, it provided goods and services to the Committee and billed the Committee within its ordinary course of business. Sutherland Company billed the Committee as soon as practical while ensuring that all charges were properly accounted for and charged. Sutherland Company, as is its ordinary course of business, often used subcontractors to provide such goods and services and, accordingly, had to wait to receive bills from such vendors before it could bill the Committee. In addition, the auditors state that Sutherland Company provided the use of its corporate aircraft to the Committee. The auditors' contention is incorrect. Sutherland Company does not have a corporate airplane. Rather, Sutherland Company, as it does for other non-political clients in its ordinary course of

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<sup>&</sup>lt;sup>5</sup>Manatt, Phelps believes that it issued periodic bills to the Committee as described in the affidavit of Judith Cunningham. However, the Committee has no record of receiving these bills. Committee records reflect the receipt of two invoices on July 28, 1992. However, regardless of whether Manatt, Phelps sent the periodic invoices, it is within Manatt Phelps' ordinary course of business to bill at the end of a project.

business, arranged for the use of transportation for the Committee and billed the Committee for such transportation. Exhibit 7.

TAC Air - Two invoices from TAC Air have been questioned by the auditors as possible extensions of credit outside the normal course of business. As the attached affidavit confirms, TAC Air did not extend credit outside the normal course of business with respect to either invoice. Exhibit 8.

The auditors have questioned the timing of a payment by the Committee to TAC Air on August 10, 1992, in the amount of \$9,370. for a February 24, 1992, charter flight. TAC Air is a licensed charter company. Truman Arnold Companies is TAC Air's parent corporation. The Committee used Truman Arnold Companies' private plane occasionally, as well as leased charter planes from TAC Air. The Committee always paid in advance for the use of the private plane as required by 11 C.F.R. § 114.9(e) and paid for the use of TAC Air's charter plane in the ordinary course of business. As provided by Mr. Day, Administrative Vice President of TAC Air, the Committee made a payment in the amount of \$10,859 for the use of Truman Arnold Companies' private plane. However, TAC Air inadvertently applied such payment to the \$9,370 charter invoice. Accordingly, no past due notices nor an outstanding balance appeared in connection with this invoice. Thus, neither TAC Air nor the Committee would have been aware that there was an outstanding invoice.

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In addition, the Committee had taken a flight on May 1, 1992, and paid for such flight in full in the amount of \$1,496. However, TAC Air mistakenly issued the Committee an invoice in the amount of \$4,232 for another flight on that same day which did not occur. Therefore, no payment was due from the Committee in the amount of \$4,232.

As demonstrated by the attached affidavit, TAC Air did not provide an extension of credit outside the normal course of business with respect to either of the two invoices questioned by the auditors.

American Federation of Teachers - The Interim Report question payment to the American Federation of Teachers by the Committee dated in the amount of \$12,126 for an Albert Shanker regular weekly column in the New York Times. The Committee paid the invoice on February 18, 1993. The delay resulted from a clerical error by American Federation of Teachers. An invoice was promptly prepared by American Federation of Teachers for the column and was forwarded to the Committee. However, the invoice was improperly made out. As a result of the error, the invoice was not properly directed to the Committee's accounting office. In February, 1993, AFT discovered the discrepancy and immediately issued another invoice to the Committee which was paid promptly thereafter. This clerical error did not cause an extension of credit outside the normal course of business. As soon as the error was discovered it was immediately rectified. In addition, the issuance of the original invoice as well as the action to immediately correct the inadvertent error evidences good faith efforts to comply with the law. Exhibit 9.

Democratic Party of Arkansas - The Democratic Party of Arkansas and the Committee executed an agreement for reimbursement to the Democratic Party in connection with the use of telephone banks during the primary campaign. The Democratic Party personnel and financial resources were at the time of the Committee's use of the phone banks through the present time, extremely limited. Accordingly, there was a delay in the issuance of an invoice to the Committee. As soon as the Committee discovered that it had not received an invoice from the Democratic Party, it notified the Democratic Party and the Democratic Party immediately issued an invoice which was paid promptly by the Committee. Good faith efforts to comply with the law are evidenced by the execution of a written agreement between the parties. However, administrative error due to a lack of sufficient personnel and financial resources delayed issuance of the invoice. Therefore, it is clear that neither the Committee nor the Democratic Party intended to make a contribution. Exhibit 10.

Newmark & Company Real Estate, Inc. - As the attached affidavit clearly demonstrates, Newmark & Company did not extend credit to the Committee outside the normal course of business. Exhibit 11. Because information regarding the Committee's month to month lease was not properly entered into Newmark's accounting system, a bill was not generated until August 15, 1992. The Committee paid the invoice in full promptly thereafter. As the attached affidavit states, however, this was within Newmark's ordinary course of business. Ms. Fennelly cites several other cases in which rent was not paid by non-political tenants for up to six months. In addition, as Ms. Fennelly attests, written leases are not always executed with tenants. Moreover, Newmark & Company never intended nor considered the timing of the billing to be a contribution. In light of the above, it is clear that both the timing of billing and payment were in accordance with 11 C.F.R. § 116.3 and, accordingly, do not represent an extension of credit outside the normal course of business.

Occidental Petroleum - The auditors have listed a possible extension of credit by Occidental Petroleum in the amount of \$19,357. The auditors have incorrectly included in this amount a \$3,000 disbursement to Jerry Stern (discussed below). As the attached affidavit states regarding the \$16,357 in charges, Occidental billed these expenses within a commercially reasonable time in accordance with 11 C.F.R. § 114.9. Exhibit 12.

<u>Jerry Stern</u> - As the attached affidavit and Committee memorandum demonstrate, Mr. Stern received payment in full for the \$3,000 charge. Exhibit 13.

Tradec - As the attached affidavit from the President of TRADEC confirms, TRADEC did not provide an extension of credit outside its ordinary course of business. Pursuant to Mr. Jackson's understanding with the Committee, he accounted for his personal time and the personal time of Patrick Booth spent supervising the maintenance of a fundraising database and performing event coordination even though these services qualified as exempt volunteer services pursuant to 11 C.F.R. § 100.7(b)(3). Exhibit 14. However, because of confusion over the meaning of "in-kind" services on the invoice, the Committee paid the \$7,807.50 notwithstanding the fact that the services qualified as exempt volunteer services. Accordingly,

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there was no improper extension of credit and the billing and payment for such services, although permissible exempt volunteer services pursuant to 11 C.F.R. § 100.7(b)(3) and, therefore, not legally mandated, was nevertheless done within a commercially reasonable time pursuant to 11 C.F.R. § 114.9. Therefore, the Tradec billing does not represent a prohibited contribution.

Walter S. Kyle - Walter Kyle did not provide the Committee with an extension of credit outside the normal course of business. As the attached affidavit proves, Mr. Kyle billed the Committee in a manner consistent with his treatment of other non-political clients of like size and financial capacity. Exhibit 15. Mr. Kyle normally bills clients at the completion of the project. Often Mr. Kyle does not receive payment from clients for at least one year from the time of billing. Accordingly, all Committee billings were handled within his normal course of business in accordance with 11 C.F.R. § 116.3 and, therefore, are not a prohibited contribution.

Mozark Productions - The auditors have questioned the timing of the billing and the billing at cost by Mozark Productions for the production of promotional videos by Mozark Productions. However, as the attached affidavit clearly confirms Mozark Productions did not provide an extension of credit outside the normal course of business. Exhibit 16. Mozark Productions provided production services to the Committee in connection with the production of promotional videos. Mozark billed the Committee at the end of the project as is customary in the entertainment industry. In addition, it is standard industry practice for production companies to bill a client for the direct costs of preparing a video plus a fee for services of the producers. In accordance with 11 C.F.R. § 100.7(b)(3), Harry Thomason and Linda Bloodworth-Thomason volunteered their personal services and did not receive compensation from Mozark for those services.

O'Keefe Ashenden Lyons & Ward - The auditors have questioned the timing of March 11, 1992, and March 20, 1992, statements of this firm. As the attached affidavits clearly demonstrate O'Keefe Ashenden Lyons & Ward billed the Committee in a manner consistent with its treatment of other non-political clients. Exhibit 17. It is customary for the firm to bill clients at the conclusion of a matter in those areas involving identified, non-recurring transactions (such as real estate, tax, will, probate, as well as all pro bono work, civic affairs and other community relation matters.) The amounts billed by the firm reflect the normal and ordinary charges for expenses of that kind and there was no discount or reduction in such expenses. Accordingly, the statements in question were accrued, billed and paid in the ordinary course of the business of the firm as it has historically practiced.

#### III. Findings and Recommendations Related to Title 26 of the United States Code

# A. Calculation of Repayment Ratio

The Committee does not dispute the auditors' calculation of the repayment ratio as

25.8346% as of the date of ineligibility.

### B. Apparent Non-qualified Campaign Expenses

#### 1. Duplicate Payments or Overpayments

The Interim Report contends that the Committee is owed \$50,358 in apparent duplicate or overpayments. The Committee has provided documentation resolving \$17,921 (Mary Leslie) of this amount. \$14,806 in refunds have been received from vendors. Of the remaining \$17,881, the Committee is still awaiting documentation for \$2,216 (Harold Ickes), \$2,062 (Carol Willis); \$2,208 has been written off as uncollectible bad debts (Gibbs, Halloran and Bachar); the Committee will be receiving a refund of \$11,145 (Bylites).

In a few instances, the Committee is owed funds from vendors who received overpayments, but the amounts owed the Committee are essentially bad debts: either the Committee is unable to presently locate the vendor or the vendor has gone out of business and has no funds available to repay the Committee. While the auditors contend that these amounts should be repaid to the Treasury, the Committee contends that it should not be required to make repayments for these amounts where it has made reasonable efforts to collect the debts owed the Committee and through no fault of the Committee is unable to do so. Thus, as to Gibbs, Halloran and Bachar, discussed below, the Committee is already out the money, has no prospect of collecting the debt and should be permitted to write the debts off as bad debts under C.F.R. § 9034.5(d) without penalty. The total amount of uncollectible debts is only \$2,208, a small percentage of total Committee disbursements.

Geoff Gibbs - The audit report contends that Geoff Gibbs received overpayment in the amount of \$507. The Committee was able to reach Mr. Gibbs for the first time on November 2, 1993. At that time the Committee staff member, Cathleen Cavender, explained the situation to Mr. Gibbs. Mr. Gibbs denied the existence of any overpayment and maintained that to the extent there may appear to be an overpayment, Mr. Gibbs accepted the payments in lieu of submitting a reimbursement request for expenses of an equal value. Ms. Cavender explained that it would be necessary for Mr. Gibbs to provide the Committee with such documentation. On the same date, Ms. Cavender forwarded to Mr. Gibbs all relevant Committee records for use in his resolution of this matter. Despite numerous Committee attempts, other than his statement above, Mr. Gibbs has failed to respond in any manner to the Committee inquiry. Additionally, in the interim Mr. Gibbs has become unlocatable, having left the Washington, D.C., area. Recently, the Committee was informed that Mr. Gibbs was located in California and through a Directory Assistance information search attempted to contact him. The Committee has left numerous messages on what we believe to be Mr. Gibbs' answering service and to date, have received no return calls. The Committee maintains the position that there may in fact have been no overpayment. However, despite the Committee's best efforts, in the absence of cooperation and documentation, it appears that we cannot further substantiate this assertion beyond a reasonable doubt. Should the Commission choose to

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maintain that this constitutes an overpayment, the Committee asserts that this debt is uncollectible under the terms of 11 CFR § 9034.5(d), and the Committee having demonstrated commercially reasonable efforts to resolve the situation, should be allowed to write this amount as an uncollectible bad debt. As such the Committee should not be further penalized with a Commission repayment determination. Exhibit 18.

Charles Halloran - The audit report contends that Charles Halloran received an overpayment in the amount of \$500. The Committee experienced major difficulties in contacting Mr. Halloran. The telephone numbers listed on Committee records had been disconnected; attempts to contact local personnel who had worked with Mr. Halloran revealed no current phone numbers and finally after receiving information that Mr. Halloran may be working in the District of Columbia, District information services carried no listing. It was not until June 1994, that the Committee was finally able to locate Mr. Halloran at his home in Arlington, Virginia. On this date, Mr. Halloran was notified of the alleged overpayment and asked to either forward the amount in question to the Committee or provide the Committee with sufficient documentation to demonstrate no overpayment. Mr. Halloran maintains that no overpayment was made, but we do not anticipate receiving either documentation or repayment from Mr. Halloran. As with Mr. Gibbs, the Committee should be able to write-off this amount as a bad debt, pursuant to § 9034.5 (d). Exhibit 18.

Steve Bachar - The audit report contends that Mr. Bachar received an overpayment of \$1,200 from the Committee. We have recently contacted Mr. Bachar in reference to this matter and have forwarded relevant Committee documentation. Mr. Bachar has as of yet been unable to review the Committee's records and is currently traveling abroad and is unable to respond. We do not anticipate wither receiving adequate documentation or repayment and due to Mr. Bachar's extensive travel and consequent unavailability, should be permitted to write-off this amount. Exhibit 18.

The Committee's response to the additional individual items noted in the report is as follows:

Alamo - The \$43,420 was refunded to the Committee from the General Committee by transfers made on January 11, 1994, and March 24, 1994.

<u>Verner, Lipfert Consulting Services, Inc.</u> - As noted in the Report, the \$10,048 was refunded to the Committee on June 16, 1993.

<u>C&P Telephone</u> - The \$3,606 was refunded by the General Committee by transfers on January 11, 1994, and March 24, 1994.

Southwestern Bell - As noted in the report, the \$17,054 was refunded to the Committee by the vendor.

Strategic Political Response - Strategic Political Response ("SPR") billed the Committee based on estimated mailing costs. After the mailings were completed and the actual costs determined, the Committee received revised invoices with the correct amounts. When all of the SPR jobs were completed for the primary, a final reconciliation was prepared. On the basis of this reconciliation, it was determined that the Committee had overpaid in the amount of \$49,856. This amount was refunded to the Committee on August 9, 1993.

Mary Leslie - As indicated to the auditors previously, the \$17,921 paid to Mary Leslie was not an overpayment. Mary Leslie was a fundraiser for the Committee. According to the terms of her agreement, §§ 4.01(a) and (b) called for compensation based on 2% of all funds raised in the state of California. Ms. Leslie has agreed to submit an affidavit further clarifying this, but due to her travelschedule, the Committee will have to submit it when it is forwarded to us. Exhibit 19. Accordingly, she received no overpayment.

### 2. General Election Expenditures

The auditors contend that the Primary Committee paid \$879,361 in expenses that should have been paid by the General Committee and \$202,204 that should have been paid by the Compliance Fund. As described more fully below, the Committee disagrees with the auditor's underlying assumption and the calculation of these numbers.

To arrive at their much larger numbers, the auditors' approach was selectively to target certain expenditures made by the Committee during the primary matching payment period and argue that even though they were paid for and used prior to the date of ineligibility they were general election expenses. The auditors' motivation in so doing appears to have been solely for the purpose of decreasing the candidate's entitlement and increasing the Committee's repayment. This method of selective review is inconsistent with the Act and regulations, unfair to the Committee and inconsistent with the Commission's recent attempts to simplify the audit process.

As discussed below, as to each expenditure questioned by the auditors, the goods and services questioned by the auditors were all purchased prior to the date of ineligibility and used in the primary. The auditors' underlying argument seems to be that the primary campaign expanded in size in May and June only because it appeared at that time that Clinton would be the nominee. From this premise they argue any expenditures related to the expanding size of the staff and the level of activity were for the general election. While it is true that the Primary Committee's level of activity and size increased dramatically between May and July, it does not follow that this increased activity and need for equipment was solely for the general election. This type of expansion always occurs in a campaign that looks likely to obtain the nomination. The likely success of the campaign does not alter the fact that the activity of the campaign until the nomination is officially secured is primary activity. Indeed, going into the Convention in 1992, although President Clinton had captured the clear majority of delegates and was virtually assured of the nomination, he did not have the number of

committed delegates required to obtain the nomination. See letter from Joseph E. Sandler, DNC General Counsel. Exhibit 20.

Under the regulations, a "qualified campaign expense" is one incurred prior to the date of ineligibility and made in connection with the candidate's campaign for nomination. 11 C.F.R. § 9032.9. Each of the expenditures described below meet this test. To the extent that some of the expenditures, such as the equipment purchased by the Committee was also used in the General, it was properly transferred to the General using the formula stated in the Commission's Primary Manual and regulations at 11 C.F.R. § 9034.5 (c)(1). This formula was specifically adopted by the Commission in order to avoid the situation created by the auditors in this report, i.e., the need to review each expenditure and determine the correct allocation of use between the primary and general. Instead, for equipment purchased and used (for whatever duration) during the primary, the Committee is permitted to transfer that equipment to the general election using the formula. The auditors' approach in this audit seeks to undermine the simplification the Commission sought in adopting this formula, to multiply the uncertainty to committees in need of clear guidance and to consume scare Committee resources in resolving what will be inevitable disputes.

The Commission's regulations at 11 C.F.R. § 9034.5 (c)(1) specify precisely the treatment of capital assets and distinguishes between those acquired prior to and after the date of ineligibility. The Primary Committee followed this formula which the auditors seek to rewrite out of the regulations.

Each of the expenditures identified by the auditors is discussed below, and additional supporting documentation establishing that they were "made in connection with the candidate's campaign for nomination" is attached.

## a. Equipment and Facilities

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Future Now. Inc., ICL. Inc., and W.P. Malone - The Interim Report contends that computer equipment purchased by the Primary Committee for a total of \$540,313 should have been purchased by the General Committee, with the Primary paying no share of the costs. This contention is contrary to the Act, regulations and prior Commission precedents regarding the purchase of equipment. Because of the dramatic increase in demand on the Primary Committee's computer systems in the Spring of 1992, the Committee made the purchases noted in the Interim Report from Future Now, Inc., ICL, Inc. and W.P. Malone. This equipment was purchased for and used by the Primary Committee. As requested in the Interim Report, details of the acquisition and usage of each computer purchase is included in Exhibit 21. The Primary Committee followed the Commission's regulations and instructions in the Primary Manual and transferred this equipment to the General, after depreciating it by

 As noted above, the regulations specify the method by which a primary committee must transfer capital assets to the general election. 11 C.F.R. § 9034.5(c)(1). This regulation distinguishes between assets acquired prior to the date of ineligibility (which may be depreciated by 40% — or more if documented by the committee) and those acquired after the date of ineligibility (for which the general must pay fair market value at the time of acquisition). Id. In the Interim Report, the auditors seek to ignore this regulation by asserting that this equipment was really only purchased because it would also be needed in the general election. They apparently do not argue that it was not used in the primary. The Commission must reject this argument for the following reasons:

- o The Commission adopted this formula in order to simplify the transfer of assets between primary and general committees. The 60/40 split was adopted with the full knowledge that in fact some capital purchases acquired early in the campaign will have depreciated to a greater extent than 40%, while others purchased later may have depreciated less. Rather than requiring each committee to document the depreciation of each asset, the Commission adopted the approach in § 9034.5 and intended to allow each committee to apply the 40% depreciation without additional documentation. The auditors seek to undermine this bright line approach, by imposing an ad hoc, post hoc and subjective reevaluation of the timing of the use and purchase of each asset.
  - o As set forth in Exhibit 21, all of this equipment was used during the Primary

<sup>&</sup>lt;sup>6</sup> When transferring the equipment, the Committee calculated the value of the assets by taking the full cost of the equipment purchased, and did not include the amount of the sales tax paid on the equipment. The auditors further contend that the value of the equipment transferred should have included the amount paid in sales tax. This contention is similarly incorrect for the following reasons: the amount paid in sales tax does not increase the fair market value of equipment purchased; including sales tax in such a calculation is contrary to standard accounting practice; Arkansas recognizes no sales tax on resales of equipment, and therefore, no sales tax was owed by the General to the Primary. Applicable Arkansas Law promulgated under Arkansas Gross Receipts Tax Regulations, §GR-49, dated November 1, 1992, states in part: "The gross receipts or gross proceeds derived from isolated sales not made by an established business or in an established manner are exempt from the tax." §GR-49 defines "isolated sale" as "...a one time sale of an item, or group of items not made by an established business..." The Committee is not an established computer merchant, nor did this transaction have the potential for multiple occurrences. When asked for guidance, the Arkansas Department of Finance and Administration stated that the Primary Committee's sale of computers to the General Committee fell within the contemplation of GR-49 and as such the Primary Committee was not under required Arkansas law to assess a tax charge against the General Committee not forward any tax receipts to the Department of Finance.

campaign. The enhanced computer capability was critical to respond to the Committee's increased correspondence needs, for the increased needs of delegate tracking, to support the scheduling operations, for general political support and for communications. The summary of the usage of each computer system, and the memoranda from Monica Breedlove and Sherry Curry, explain in detail how this computer support was critical to the primary efforts and how the Committee's systems were inadequate by February and March. In addition, we have included copies of some sample repair call invoices from March and May showing that the Committee's system was crashing. Exhibit 21. Rather than the purchases being timed to justify payment by the Primary as the auditors contend, the acquisition of the needed equipment was long overdue.

o The auditors' position on this equipment is also internally inconsistent. While they question the need for the increased equipment in the primary, they do not challenge the Committee's increased expenditures for staff and overhead which necessitated the increased computer capability. Thus, they apparently do not dispute that the Primary Committee had dramatically increased staffing requirements during this period, but rather would disallow only the Committee's purchase of equipment to support that staff.

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o The information contained in the Committee Exhibit 21 also demonstrates that the Committee considered alternatives to purchase of new equipment during May and June, 1992. The Committee's computer consultant looked into the possibility of upgrading the Committee's existing system to accommodate the increased usage, but determined that upgrades would cost approximately \$400,000 and would still be unreliable. Thus, it was more cost effective for the Primary Committee to purchase the new equipment for a total of \$540,000 with the expectation that it would be transferred to the General with depreciation of 40%.

In summary, these equipment purchases were made by the Primary Committee during the matching payment period, were for equipment used during and in furtherance of the primary campaign, and were transferred to the General Committee in compliance with and reliance on the Commission's regulations at 11 C.F.R. § 9034.5 and the Primary Manual. Thus, no further amount is owed the Primary from the General Committee.<sup>7</sup>

I-K Electric - This expenditure of \$79,808 was necessary to upgrade the wiring at the Committee's headquarters. It was incurred and used during the primary campaign, and thus was a qualified campaign expense by the Primary Committee. This wiring would have been necessary to accommodate either an upgrade to the Committee's existing system or the purchase of the new equipment, and was necessary to support the increased usage during the primary campaign for uncontroverted primary purposes. Thus, the Primary Committee

Once again, the auditors' sole motivation seems to be to try to find ways to decrease the primary's qualified campaign expenses to increase the amount the auditors allege that the Primary Committee received in excess of entitlement.

properly paid these costs.

<u>Little Rock Newspapers</u> - The Primary Committee agrees that this amount, \$12.500, was erroneously paid by the Primary and should have been paid by the General Committee.

#### b. Polling and Direct Mail

Greenberg-Lake and Opinion Research - The auditors contend that polling costs of \$93,904 paid to Opinion Research and \$108,622 paid to Greenberg-Lake for polls conducted between mid-June and the convention should have been allocated to the general election. This position is inconsistent with the facts concerning the purpose and usage of the polls, as well as the Act, regulations, and prior Commission treatment of expenses paid by prior primary committees during this period of time.

As the Committee advised the auditors at the Exit Conference and as set forth in the memorandum from the Executive Director of Greenberg Research, Inc. dated November 8, 1993, these polls were related to delegate tracking and support functions and vice-presidential selection. Since the auditors apparently mistakenly believe that they can discern the purpose of polls by reading the questions, the Committee has obtained and attached additional documentation and information concerning the purpose and use of these polls. Exhibit 22. Although then-Governor Clinton had a clear majority of delegates and looked certain to obtain the nomination, he did not have sufficient committed delegates going into the Convention to secure the nomination. Thus, this pre-Convention period was critical for consolidating his support and demonstrating his electability.

As the attached affidavit from Greenberg Research confirms, the polls which the auditors cite as general election polls were conducted in order to develop and hone the Candidate's message prior to and during the Convention and to successfully present the Candidate at the Convention in order to ensure the necessary delegate support to obtain the party nomination. In addition, these polls were conducted to enable the Committee to maximize media coverage at the Convention in order to effectively present the candidate at the Convention. For example, with respect to the Convention polls, convention polling was done each night after prime-time and the results of the Convention polls were presented each morning to the party leadership in order to rally the delegates, to assure delegates that Governor Clinton's popularity was strong and, accordingly, that he was an electable candidate.

<sup>&</sup>lt;sup>8</sup>Polling is a professional field requiring expert knowledge. If the average individual could perceive in each instance the purpose of poll questions, the results would be far less reliable -- or there would be no need to retain the services of professional pollsters to conduct the polls. Thus, inasmuch as the auditors are not professional pollsters, their opinion as to the purpose of the polls in question or the use to which information derived from the polls can be put is not persuasive.

In fact, all polls leading to the Convention were designed to ensure delegate support by determining whether the Candidate's message was being communicated effectively and in order to demonstrate the Candidate's electability.

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Further, an essential part of the presidential nomination process is the selection of a vice-presidential running mate. Accordingly, some of the polls conducted prior to the Convention tested the choice of a vice presidential nominee by measuring name recognition and public perception of individual candidates. As Greenberg Research's affidavit provides, survey research done for the Committee in June and July measured the effectiveness of the Candidate's message at that particular moment of time. "A poll is a snapshot of what people are thinking at that particular moment in time. - Polls quite often are outdated within a few days, especially those dealing with political campaigns and issues because daily events can dramatically affect the effectiveness of a candidate's message." Accordingly, it is clear that payments made for these polls which were arbitrarily selected by the auditors were made in connection with the candidate's nomination and that such obligations were incurred prior to the date of ineligibility.

Not only is the auditors' position contrary to factual authority, it is also blatantly contrary to legal authority. A "qualified campaign expense" is defined as a "purchase, payment, distributions, loan, advance, deposit, or gift of money or of anything of value - (A) incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election, and (B) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid." These obligations clearly were incurred prior to the end of the primary and as confirmed by Greenberg Research were for polling in connection with the primary.

In addition, the auditors' treatment of the Committee's payment of primary polling expenses is inconsistent with prior Commission actions. The Commission, in the Reagan-Bush '84 audit determined that polling expenses for polls conducted before the end of the primary but after all of the state primaries or caucuses had been held, as well as political consulting work performed with respect to a specific state after the respective primary or caucus and payments to vendors for voter registration services used in a state after the date of the caucus or primary were made in connection with the candidate's campaign for nomination for election and were, therefore, qualified campaign expenses. These expenses totalled \$2,072,283.83.

Conversely, when committees have argued that certain expenditures incurred prior to the date of the nominating convention were for general election purposes, the Commission has rejected such a position. For example, the Commission determined in the Bush/Quayle '88 audit that \$30,101.26 in payments for campaign trips which were taken prior to the convention were not permissible general election pre-period expenses. Similarly, in the Dukakis for President Committee audit the Commission rejected the Dukakis' Committee's position that it halted its primary election fundraising efforts in June 1988, because it was likely to raise more than it could legally spend and it was evident that after the California primary (June 7, 1988),

Governor Dukakis was assured of the Democratic Party presidential nomination. Firmly, in the Jack Kemp for President audit, the Audit Division rejected the Kemp Committee position that it was entitled to exclude office rent, utilities, equipment lease payments and reland services for periods following the date of a state's primary election. The Audit Staff in rejecting the Kemp Committee's position that expenses are incurred after the date of the state primary and that these costs are part of the costs of establishing and maintaining the state office. Furthermore, the Commission stated that "activity at State offices does not cease the day after the primary election. Some activity will be necessary to finish the office's business in the days following the primary. These expenses are also part of the cost of maintaining the office the purpose of which is to influence the primary election in that State."

It is apparent from Commission determinations and the underlying rationale in the above-noted matters, that the auditors' current position regarding the Committee's polling expenses directly contradicts Commission policy. Moreover, it is evident from the above-noted cases, that the auditors in an effort to increase the Committee's repayment will adopt the opposite position from the Committee's no matter what the circumstances rather than adopt the position consistent with the explicit legal authority and the Commission's long-standing policy that expenses incurred prior to the Convention are primary expenses.

The auditors also seem to suggest that the Committee was <u>required</u> to pay for polls conducted during June from general election funds since the regulations identify polling as a permissible pre-general election expenditure. 11 C.F.R. § 9003.4(a)(1). This regulation permits general election polling prior to the beginning of the expenditure report period, but does not in any way require committees to pay for polls conducted prior to the date of ineligibility from general election funds.

In fact, it is unlikely that polls conducted prior to the date of ineligibility would be in connection with the general election. As acknowledged in the Commission's regulations, polls devalue very quickly, and are worth only 50% 16 days after they are conducted. 11 C.F.R. § 106.4. The auditors apparently disagree with the Commission's regulations since they find the fact that polls diminish rapidly in value "not persuasive." Notwithstanding the auditors' opinion, it is difficult to perceive how polls which are of virtually no value by the date of ineligibility are for the purpose of influencing the general election.

Moreover, the auditors have included in the amount of expenses which they assert are general election expenses, travel expenses that do not even correspond to the polls which the auditors have listed as general election polls. Exhibit 23. Accordingly, even if one accepts the auditors' position that the polls they identified are general election polls, these expenses in the amount of \$5,985.45 relating to focus group travel do not constitute general election

expenses.9

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Primary Fulfillment and Compliance Fund Solicitation by SPR - During August and September 1992, Strategic Political Response sent two joint mailings on behalf of the Primary Committee and the Compliance Fund. The purpose of these mailings was dual: primary fulfillment and solicitation of contributions to the Compliance Fund. SPR, the direct mail vendor, determined the appropriate cost allocation to be 85% Primary and 15% Compliance Fund, based on generally accepted accounting standards applicable to dual purpose mailings by nonproft organizations.

Attached is an affidavit from SPR detailing again the basis on which the allocation was determined. Exhibit 24. In addition, SPR has provided information regarding what the costs would have been had separate mailings been sent. This information clearly supports the allocation used by SPR, as well as supporting the reasonableness of the standard accounting practice followed by SPR. <sup>10</sup>

The auditors, on the other hand, give no basis for their proposed division of the costs on a 50/50 basis other than the fact that there are two committees involved. This position is contrary to the Commission's allocation regulations which provide that expenses should be allocated on the basis of "the benefit reasonably expected to be derived" from the activity. 11 C.F.R. § 106.1(a).

As the Strategic Response affidavit details, Strategic Response determined the 85-15 allocation using generally accepted accounting principles as well as a reasonable, common sense approach to the matter. The principal purpose of both mailings was to fulfill promises made in earlier Primary solicitations. As a matter of efficiency and conservation, the mailings served a secondary function by including a Compliance Committee solicitation as well. Faced with determining a cost allocation between the two Committees, Strategic Response relied on the approach espoused by the American Institute of Certified Public Accountants, Position 87-

<sup>&</sup>lt;sup>5</sup>The invoices for travel costs associated with focus groups are 3293 (incorrectly labled 3184), 3688, 3695, 3781, 3782 and 3882. Please note, in addition, that Invoices 3540, 3687, and 3688 were not for travel associated with any poll identified by the auditors as the auditors assert in their workpapers. Rather these invoices represented travel costs associated with various focus groups.

The auditors suggest that the American Institute of Certified Public Accountants Statement of Position 87-2 relied on by SPR in allocating the costs of the mailing is irrelevant because "FECA matters are not governed by this accounting publication." Interim Report p. 7. This is besides the point. The Act and Commission regulations frequently make references to other general standards and practices such as usual and normal charge, ordinary course of business, etc. Moreover, it appears, however, that the auditors rely on what they call standard accounting practice whenever that produces a result they like, but reject it when it does not.

2, an approach widely used throughout the direct mail fundraising community (see the AICPA discussion contained in the Strategic response affidavit paragraph 4). As embraced by the AICPA and mandated by reason, Strategic Response estimated the relative costs associated with each separate issue. Their estimates proved to be extremely accurate.

The production costs of the fulfillment material for the pin fulfillment was \$232,345.79 (88.9% of the total production cost of the mailing). The production cost of the solicitation letter and associated components (reply device and envelope) was \$28,791.05 (11.1% of the total production cost of the mailing). The production cost of the fulfillment material for the photo fulfillment was \$106,782.40 (85.7% of the total production cost of the mailing). The photo fulfillment mailing contained no separate solicitation material, but rather a letter expressing the Primary Committee's gratitude for the earlier contribution. Included in the letter of gratitude was a line encouraging a contribution to the Compliance Committee. Strategic response derived the appropriate cost allocation by assigning 20 percent of the cost of the letter (roughly equivalent to the space that the contribution request occupied) to the Compliance Committee -- \$17,872 (14.3% of the total production cost of the mailing).

The Commission has previously taken the position that a Committee, and in this case the Committee's professional vendor, must be allowed wide discretion to use their best judgment under the circumstances to determine the proper allocation of costs between primary and general election compliance funds. The wisdom of this position recognizes the difficulties faced by both the Committees and the vendors that serve them during an election cycle. Additionally, this approach recognizes that upon a showing of reasonable methods, the Audit Division's ex poste preferences should not override a reasonable method used at the time of allocation.

The Audit Division further contends that invoices totaling \$69,660 submitted by SPR for work performed on the Primary Committee's Master file are general election expenses. As the SPR affidavit demonstrates, the invoices reflect expenses incurred in connection with and properly charged to the Primary Committee. Pursuant to the Strategic Response - Committee Agreement dated May 11, 1992, paragraph 12, the master file is the "property of the Committee". Additionally, under the terms of the Agreement, Strategic Response was required to fully process the contributor information. This obligation did not conclude upon nomination of the candidate at the Democratic National Convention. On the contrary, responses from solicitations mailed during the primaries continued to flow into the campaign. After these responses were keyed into the system, the file then had to be cleaned and merged into a variable length master file which is a database as opposed to a string of unrelated data. This updating and processing continued well beyond the date that the last donation was received from Primary mailings and well beyond the Democratic National Convention.

Not only does the processing of a master file continue beyond the Democratic National Convention, but its usefulness does so as well. As the Strategic Response affidavit explains "A master file may be of significant surviving value to the entity which owns it, as it serves a

crucial function as both a historical document as well as providing an important record of those people who are most likely to contribute again in the future." In addition to appreciating its immense historical value, the Committee was particularly concerned that the master file be complete and available as a potential source of future Primary contributions. There was significant concern in May 1992, that the Primary Committee was going to fall considerably short of fundraising goals, requiring it to continue fundraising efforts beyond the Convention to retire the debt. A complete master file was crucial to any future fundraising effort.

In conclusion, it is clear that the expenditures to SPR questioned in the Interim report were qualified campaign expenses of the Primary.

#### c. General Election Media Expenses

The Man from Hope - A biographical film of President Clinton, entitled "the Man from Hope" was aired at the 1992 Democratic Convention prior to President Clinton's acceptance speech on July 16, 1992. According to the auditors, the cost of producing the film was \$191.273. The Primary Committee paid \$161,273 of this amount and the 1992 Democratic Convention Committee ("Convention Committee") paid \$30,000. The purpose of the film was to introduce Clinton to the Convention prior to his acceptance of the nomination.

In the Interim Audit Report issued to the Convention Committee for the 1992 Convention, the auditors took the position that the \$30,000 paid by the Convention Committee was an excessive contribution to the Primary Committee. Subsequently, on October 6, 1993, at the Exit Conference for the General Committee audit, the auditors contended that the payment by the Convention Committee was an excessive contribution not to the Primary Committee but to the General Committee. At the General Committee Exit Conference, Committee attorneys questioned Joe Stoltz, Deputy Assistant Staff Director of the Audit Division, regarding the apparent change of position, and were advised that the Audit Division's position on this issue was "evolving". In issuing the Final Audit Report on the Convention Committee, the Commission rejected the auditors' position that the payment of the \$30,000 by the Convention Committee was impermissible. The issue of whether the costs of the film were properly paid by the Primary Committee was not addressed.

For the reasons set forth below, the Committee contends that the payment for costs of the film was properly a primary expense in that it was incurred during the matching payment period and was made in connection with the candidate's campaign for nomination. 11 C.F.R. § 9032.9(a).

o The payment for the costs of the producing The Man from Hope meets the definition of "qualified campaign expense." Notwithstanding the auditors' assertion the purpose of the biographical film of President Clinton was for the general election, the payments for the costs of producing the film squarely meet the definition of qualified campaign expense. The obligations were <u>incurred</u> prior to the date of ineligibility and they were made "in connection

with his campaign for nomination," since the purpose of the film was to introduce he convention prior to the time he accepted its nomination. Thus, the costs of the film properly considered a primary expense, since they were in connection with his nomination by the Convention.

- O The showing of the film was for the purpose of introducing the candidate to the Convention, thus it was a proper primary expense. Generally, all convention-related expenses paid by candidates' committees have been considered legitimate primary expenses. The Commission has not routinely singled out some convention expenses and considered them for the purpose of securing the nomination while others are considered for the purpose of the general election. Indeed, the Commission has always considered travel expenses back from the convention to be primary expenses even though those expenses—unlike the costs of producing the Man from Hope— are usually incurred after the date of ineligibility.
- o The auditors have never in the past singled out a convention film for special consideration or treatment. The only reason they have done so here is that this film bears a separate and readily identifiable name. The Committee believes that the auditors, if asked, would be unable to tell the Commission how such films have been paid for in the past, even though there has been a comparable film at every major party convention in the recent past. Thus, it is grossly unfair to single out this film to establish a new rule, particularly one that makes no sense. If the Commission wishes to make rules restricting the payment for convention films to a particular source, it should do so in a rulemaking proceeding and not for the first time in the context of a committee audit. The auditors' "evolving" position on this issue further emphasizes the inappropriateness of making a new rule in the course of an audit. The auditors' change of position on this issue is a clear demonstration that their entire purpose in arguing that it should be a general election expense is because they discovered that making it a general election expense results in disadvantage to the Committee.
- o The auditors are incorrect that the candidate's date of ineligibility was July 15, 1992. The proper date is July 16. Although the Committee believes that it is immaterial to the Commission's determination on whether this film was a proper primary expense, the date of ineligibility is key to the auditors' current argument as to why the film should be considered a general election expense. The auditors contend that the showing of the film on the last day of the convention renders it a general election expense, since they have concluded that July 15, 1992, was the candidate's date of ineligibility. While it does not matter whether the

When portions of the film were adapted for use in the general election, those additional costs were paid by the General Committee and the DNC.

It is difficult to perceive any harm in permitting a candidate to choose whether a convention film will be produced by a primary committee, a convention committee, or a general election committee. Indeed, it is likely that since the first publicly funded campaign in 1976, some combination of all of these sources have been used to produce convention films.

candidate's date of ineligibility was July 15 or 16, since the payments for the costs of the film meet the definition of qualified campaign expense in any event, the Committee disagrees with the auditors contention that the date of ineligibility was July 15.

O The auditors' assertion that the date of ineligibility is July 15, is inconsistent with DNC rules. 11 C.F.R. § 9033.5(c) provides that a candidate's date of ineligibility is the last day of the matching payment period. The last day of the matching payment period for a candidate seeking the nomination of a party which nominates its candidate at a national nominating convention is the date on which the party nominates its candidate. 11 C.F.R. § 9032.6(a). As set forth in the attached opinion letter from Joseph E. Sandler, General Counsel of the Democratic National Committee, under the Call to the Convention, the party rules on nomination of the presidential candidate, the date on which the party nominates its candidate is the date on which the nomination is accepted. Exhibit 25. The Commission must defer to the party on this question, since the regulations define this date of ineligibility as "the date on which the party nominates its candidate." The regulations do not specify a particular day of a convention, such as the "second to last day of the convention," as the auditors would like the regulations to read.

Indeed, for a litany of reasons, it makes no sense for the date of ineligibility to be the date of the vote, and not the date of the acceptance. Because the votes at conventions frequently take place late into the evening, this interpretation would require the Commission to determine the precise time at which the vote is concluded. Since the votes often occur after midnight, under the auditors' interpretation, the date would not be the date on which the roll call was scheduled, but the date on which it was concluded. In fact, in 1992, both the Republican and Democratic conventions held their roll call votes for the presidential nominee on the second to last day of their respective conventions. The Democratic Convention roll call concluded at 11:54 p.m., while the Republican Convention roll call concluded at 12:11 a.m. the following day. Exhibit 26. The auditors' interpretation of the date of nomination requires the Commission to consider the timing of the vote and, as illustrated by the 17 minute interval above, could result in disparate treatment of the two major party nominees. This makes no sense. The Commission has not previously had to address the potential absurdity of this exercise, and the Committee is unaware of other committees raising this issue in prior elections, because the auditors have never previously singled out a convention-related expense and argued that it should have been paid for by the general election. The Commission should avoid this absurdity by simply rejecting the auditors' assertion that the film was a general election expense.

The statute itself contemplates that the last day of the convention is the date of ineligibility. In § 9032.6(b)(2), for example, for candidates not nominated at a convention, the last day of the matching payment period is the last day of the convention of the last major party convention, not the second to last day of the convention of the last major party convention, as the auditors would like to read the date of ineligibility for major party candidates. Finally, the Commission has never certified a major party nominee as eligible to

receive the general election funds until after that candidate has accepted the nomination of his party. See 11 C.F.R. § 9002.2(a)(1) and § 9003.1(a)(2).

Thus, for the reasons set forth above, the Commission should reject the auditors' contention that the costs attributable to production of the biographical film of President Clinton shown at the 1992 Democratic National Convention were required to have been paid for by the General Committee.

In addition to the costs related to production of the Man from Hope, the auditors have questioned four additional media expenditures totalling \$34,155.

35 mm Photo Shoot - The Audit Division has chosen to challenge a charge for a "35 mm photo shoot" at the Democratic National Convention as general election expense. The Audit Division maintains "Film taken on these days could have little opportunity to be used in the primary campaign". Promises of campaign memorabilia by a primary committee can have a powerful fundraising effect. The Audit Division must be aware of this potential, as they have pointed out the use of the item in question for such a purpose in the Interim Report of the Audit Division on teh Clinton/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund. In the Compliance/General Committees' report, the auditors' note that "One of these mailings contained a photo of the Presidential and Vice Presidential candidates ont he podium at the convention which had been promised in an eariler mailing fundraising appeal by the Primary Committee." See also Exhibit 24, paragraph 3.

We do not believe that there is any question that the production of primary fulfillment, by a primary committee, is an acceptable primary committee expense. However, even in the absence of such clear evidence supporting our assertion, we maintain that the Commission should not endorse the Audit Division's approach to convention expenses allocation. To classify an expense during the covention as a general committee expenses merely because it occurs a moment beyond the candidate's date of ineligibility leads to absurd results. Regardless of the exact moment that the photograph of the nominee/candidate is taken, this should be an unquestioned primary committee expense. A party's nominating convention is a significant historical moment, both for the national as well as the party. The primary committee has dedicated all of its time and efforts to deliver its candidate to this particular event. Not only does a photograph of the nominees have significant fundraising drawing power, but more simply, it is a means of memorializing the event for both the committee and the party.

As to the \$18,889 in expenses from great America Media, as the affidavit of Annemarie Hannon, Exhibit 27, demonstrates, the charges questioned as potential general election expenses are except as discussed below, valid primary committee expenses, incurred in connection with primary committee work prior to the Convention or in furtherance Committee work after the convention. As the affidavit points out, Great America Media has identified one charge for \$760, out of the \$18,889 of charges reported on the invoice, that may

have been mischarged to the primary. Great America Media and the Committee are currently investigating this charge.

# d. Miscellaneous General Election Expenses

Putting People First - The Primary Committee records indicate that 106,000 copies of Putting People First pamphlets were transferred to the General Committee. At the time of transfer, the Committee treated the pamphlets as capital assets and transferred them at a cost of \$.15 per copy (60% of \$.25). The auditors correctly note that the actual cost of these pamphlets originally was \$.72 each.

Putting People First was outline of the Clinton economic plan prepared for and used during the primary campaign.<sup>13</sup> The 150,000 copies invoiced on July 6 and 10, 1992, were ordered for distribution at the Convention. As the auditors were advised at the Exit Conference, at the conclusion of the primary campaign, the Committee erroneously believed that 106,000 copies of the pamphlet remained and would be used in the general election. Therefore, the Committee treated them as a capital asset and transferred them to the General Committee. The auditors dispute the Committee's calculation of the value and take the position that full cost of the pamphlets transferred should have been paid by the General Committee. The Committee disagrees with this conclusion for the following reasons.

- o The pamphlets were not used in the general election, and, therefore, there was no need for the General Committee to pay any portion of the cost of producing them. Based on the best information available to the Committee at this time, it appears that the pamphlets sent to and distributed at the Convention were erroneously counted in the inventory prepared by the Primary Committee. While there may have been some copies left over from the Primary, there is no indication that they were distributed during the general election.
- o Even if some of the pamphlets were used in the general election, they are not the type of asset that the General Committee was required to purchase from the Primary Committee, or that the Committee was required to include as an asset on the NOCO. The regulations divide assets into two types: "capital" and "other assets." 11 C.F.R. §

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Putting People First is inaccurately referred to in the audit report as a "book." While a book bearing the same title was published by a private publisher, that book is not at issue here. It should be noted that it was published in 3 different forms, all of which resemble a booklet or brochure more than a "book." The copy of Putting People First that was invoiced on July 6 and 10 is attached for your information. Exhibit 28. As the Commission can see, the format was seventeen 8 1/2 x 11" pages folded over in the middle. It was hardly a "book" and, moreover, it was clearly intended for use in the primary, as it is marked Clinton for President and includes the Primary Committee disclaimer. There is no reference to the Vice Presidential running mate, Senator Al Gore.

9034.5(c)(1). "Capital assets" are those such as office equipment, furniture, vehicles and fixtures acquired for use in the operation of the campaign. Id. "Other assets" are preserty acquired for use in fundraising or for collateral as campaign loans. Items which are neither "capital" nor "other" assets, such as leftover campaign materials (buttons, bumperstickers, brochures, signs) need not be included on the NOCO, and there is no requirement in the regulations or Commission practice that they be valued and transferred as an asset between the primary and the general election.

The auditors concede that the pamphlets were not capital or other assets, but contend that they were general election expenses paid by the primary. That is not the case. Putting People First was developed for use in the primary campaign. The last orders (invoiced July 6 and 10) were placed specifically for the Convention. Since the expense of printing these copies was incurred prior to the general election expenditure report period, the pamphlets would be qualified campaign expenses for the general election only if they were for use during the general election period. They were not. They were clearly marked "Clinton for President" and, as noted above, there is no known use of these copies during the general election. The Committee erroneously counted them as an asset transferred to the General and the General Committee should not have paid anything for them. A revised version of Putting People First was printed for the general election. A copy of this is attached as Exhibit 29. The primary should therefore, refund the \$15,900 paid by the General Committee.

<u>Press Association, Inc.</u> - The Committee agrees that the Primary overpaid for its portion of the \$14,753, but disagrees with the auditors' contention that the entire amount was a general election expense. The correct amount owed by the General Committee is \$7,687.45. This amount was refunded on June 10, 1994.

Air Advantage - The Committee agrees that \$2,000 and \$27,222.07 were erroneously paid by the Primary Committee. \$29,222.07 was reimbursed by the General Committee by transfers on January 11, 1994, and March 24, 1994. As to the \$15,000 in reconfiguration costs on July 10, 1992, the airplane was used in the primary and thus was properly allocated to the Primary.

The Air Advantage bill is another instance of the auditors contending that expenses for items for things that were used in the primary should have been paid 100% by the general. There is no support or rationale for this. It simply reflects the auditors' attempt to increase the amount of the Committee's repayment.

Mandarich & Associates - As noted in the audit report, the Committee recognizes that this amount should have been paid by the Compliance Fund. It was refunded on June 10, 1994.

Other expenses - The auditors have also noted additional expenses amounting to \$20,066 that should have been paid by the General Committee. On January 11, 1994 and

March 24, 1994, \$14,420 was refunded by the General Committee. the remaining \$5,646 is being transferred this week.

# 3. Other Non-Qualified Campaign Expenses

### a. Attorney Client Privilege

The auditors have questioned a Committee payment of \$37,500 to Kathlyn Graves Escrow Agent. Attached is a copy of a letter from the Committee's General Counsel, Anthony S. Harrington, providing additional details regarding the payment. Exhibit 30. Based on the information provided, this payment constituted a qualified campaign expense under 11 C.F.R. § 9034.4(a)(3). As described in Mr. Harrington's letter, the payment was for the costs of complying with the post election requirements of the Act and for necessary administrative costs associated with winding down the campaign.

## b. Campaign Bonuses

The auditors have questioned Committee bonuses in an aggregate amount of \$237,750 and suggest that these payments were not "in connection with the campaign for nomination." This assertion is absurd. The Commission has never before stated that it is not a qualified campaign expense to pay bonuses to staff and consultants for work performed on the campaign. As the Commission is well aware, many staff and consultants to campaigns devote extraordinary time and effort to the campaign, and often are undercompensated. During the course of the primary campaign, the Committee employed over 800 staff and consultants, and awarded bonuses only to 21 individuals or firms.

The Committee has attached affidavits from David Watkins, Rahm Emanuel and Amy Zisook clearly establishing that the bonuses were obligations incurred prior to the date of ineligibility based on services rendered prior to the date of ineligibility or, in a few instances, for additional windown, and providing additional detail regarding the reasons for each bonus and the factors on which the amount was calculated. Exhibit 31.

The Committee could find no instance of the Commission disallowing bonuses, but did find instances of the Commission permitting other rewards to staff after the close of the campaign. For example, the Commission has considered severance pay after the date of ineligibility as a qualified campaign expense, as well as payment of the costs of a staff party

While the Committee believes that bonuses are qualified campaign expenses, whether or not agreed to prior to the date of ineligibility, in each of these instances, the bonuses were an outstanding obligation of the Committee as of the date of ineligibility and were included in the Committee's NOCO calculations at that date. The auditors have seen copies of the Committee's workpapers reflecting the bonuses as outstanding Committee obligations.

after the election.

A review of Mr. Watkins' affidavit demonstrates that, in addition to extraordinate service and performance, there were other factors for the award and amount of the bonuses. In many instances the bonuses were awarded because it was determined that the regular rate of compensation paid to the individuals during the campaign was below market rate. In addition, contrary to the auditors' assertion, some of the bonuses were in fact contractual agreements reached at the very beginning of the campaign. Finally, some of the bonuses were calculated based on the expectation that the individuals involved, although they became employees of the General Committee, would be needed for some consultation during the windown period.

Thus, the Committee has demonstrated that all of these bonuses were "in connection with the campaign for nomination," and thus were qualified campaign expenses. 11 C.F.R. §§ 9032.9 and 9034.4(a)(3). The specific bonuses are discussed below.

Carville & Begala - Carville & Begala received an \$87,500 bonus pursuant to a contractual addendum dated March 3, 1992, which provided for an \$87,500 bonus. Exhibit 32. Accordingly, the obligation was incurred prior to the end of the primary in furtherance of President Clinton's nomination in accordance with 11 C.F.R.§ 9032.9(a). Therefore, payment to Carville & Begala in the amount of \$87,500 is a qualified campaign expense.

Rahm Emanuel - Rahm Emanuel was a National Fundraising Co-Chairman for the Committee. He received a \$52,000 primary bonus pursuant to an agreement with the Committee regarding a performance based bonus plan. Exhibit 31. Such agreement was negotiated and finalized with David Wilhelm, the campaign manager, prior to Mr. Emanuel's joining the Committee in November, 1991. The agreement provided that a bonus would be paid if the Committee's fundraising performance exceeded campaign goals. The fundraising performance of Mr. Emanuel exceeded the Committee's goals and expectations. Under the direction and leadership of Mr. Emanuel and Ms. Zisook, the other Fundraising Co-Chair, approximately \$17,000,000 was raised by individual fundraisers. Such amount was far in excess of what the Committee anticipated would be raised by individual fundraisers. Moreover, this amount represented approximately 85% of the Committee's total anticipated fundraising budget of \$20,000.00. (This \$20,000,000 amount represented the total anticipated amount to be raised by both individual fundraisers and direct mail.) In addition, this amount represents approximately 67% of the total amount of contributions received by the Committee (\$25,197,422). This additional money raised, far in excess of the amount anticipated, was clearly due to the superior direction and management Mr. Emanuel provided to the Committee's national fundraising efforts. Most importantly, as the campaign grew and the Committee's fundraising goals increased, Mr. Emanuel was extremely responsive to the Committee's fundraising needs, reaching the increased fundraising goals in short periods of time with little notice. Accordingly, since the payment to Mr. Emanuel was clearly to further the Candidate's nomination and the agreement with Mr. Emanuel was entered into well before the end of the primary, contrary to the auditors assertions, the payment in the amount of

\$52,000.00 is unquestionably a qualified campaign expense pursuant to 11 C.F.R. § 9032.9(a).

Amy Zisook - Amy Zisook received a \$25,000 bonus pursuant to an agreement entered into between Amy Zisook and Associates and the Committee well before the end of the primary. Exhibit 31. The agreement required that the Committee pay a primary bonus of \$25,000 within 5 days of withdrawal of the candidate or within 5 days after the last primary election, i.e. June 16, 1992. When she had not yet received the bonus in July, 1992, she notified the Committee. The Committee requested that she provide a statement reflecting the obligation. She provided the statement and was paid promptly thereafter. Accordingly, since the payment to Ms. Zisook clearly was to further the Candidate's nomination and the agreement with Ms. Zisook was entered into well before the end of the primary, the bonus to Ms. Zisook clearly was a qualified campaign expense.

Paul Carey - Paul Carey was the Director of Finance for New York State. Mr. Carey received a bonus in the amount of \$3,000. based upon discussions between David Watkins, Director of Operations and Rahm Emanuel, National Fundraising Co-Chairman and Mr. Carey's supervisor, held prior to the end of the primary. Exhibit 31. The bonus represented payment for performance beyond original goals. Mr. Carey raised approximately \$918,900 personally. The bonus amount was intended to bring Mr. Carey up to market rate at \$3,500 per month for the period from November, 1991 through January, 1992. Therefore, payment to Mr. Carey is unquestionably a qualified campaign expense pursuant to 11 C.F.R. § 9032.9(a).

Jim Palmer - Jim Palmer was the New England Finance Director. He received a primary bonus in the amount of \$2,500. As Mr. Watkin's affidavit attests, Mr. Palmer's bonus in the amount of \$2,500 was based upon discussions between Mr. Watkins and Mr. Carey's supervisor, Rahm Emanuel held prior to the end of the primary. The bonus represented payment for performance beyond original goals. Exhibit 31. Mr. Palmer was responsible for personally raising approximately \$527,000. Therefore, since Mr. Palmer's bonus was clearly made in connection with President Clinton's campaign for nomination and incurred prior to the date of ineligibility pursuant to 11 C.F.R. § 9032.9(a), such payment is unquestionably a qualified campaign expense.

Rick Lerner - Rick Lerner was a fundraiser for the Committee. He received a \$3,000 bonus because his performance exceeded original goals. Mr. Lerner personally raised approximately \$280,000. Such bonus was determined based upon discussions between Mr. Watkins and Mr. Lerner's supervisor, Rahm Emanuel, prior to the end of the primary and was intended to bring Mr. Lerner's pay to market rate at \$2,500 per month. Exhibit 31. Thus, payment to Mr. Lerner in the amount of \$3,000, which was incurred prior to the end of the primary in connection with President Clinton's nomination, clearly satisfies 11 C.F.R. § 9032.9(a) and is a qualified campaign expense.

John Frontero - John Frontero was a fundraiser for the Committee who received a \$2,500 bonus to reward him for a performance which exceeded original goals. Mr. Frontero personally raised 180,338. Such bonus was based upon discussions between Mr. Watkins and Mr. Frontero's supervisor, Rahm Emanuel, and was determined prior to the end of the primary. Exhibit 31. The \$2,500 obligation to Mr. Frontero was, therefore, incurred prior to the end of the primary in connection with President Clinton's nomination. Accordingly, payment to Mr. Frontero in the amount of \$2,500 is clearly a qualified campaign expense pursuant to 11 C.F.R. § 9032.9(a).

Nancy Jacobson - Nancy Jacobson was the Mid-Atlantic Finance Director. She received a \$3,000 bonus based upon her performance which exceeded original goals. Ms. Jacobson personally raised approximately \$922,000. Her bonus was based upon discussions between Mr. Watkins and her supervisor, Rahm Emanuel, and was determined prior the Democratic National Convention. Exhibit 31. Accordingly, this payment was a qualified campaign expense since it was incurred prior to the end of the primary in connection with President Clinton's nomination in accordance with 11 C.F.R. § 9032.9(a).

Patrick Dorinson - Patrick Dorinson was the Western Finance Director. Mr. Dorinson received a \$2,500 bonus in recognition of a performance beyond original goals. Mr. Dorinson personally raised approximately \$216,300. Mr. Dorinson's bonus was based upon discussions between Mr. Watkins and his supervisor, Rahm Emanuel, and was determined prior to the end of the primary. Exhibit 31. His bonus payment to Mr. Dorinson, incurred prior to the end of the primary in connection with President Clinton's nomination is a qualified campaign expenses as defined by 11 C.F.R. § 9032.9(a).

Matt Gorman - Matt Gorman was the Deputy National Finance Director. He received a bonus in the amount of \$3,000 in recognition of his performance which exceeded original goals. Mr. Gorman personally raised approximately \$537,000. His bonus was determined based upon discussions between Mr. Watkins and Mr. Gorman's supervisor, Rahm Emanuel, and was determined prior to the end of the primary. Exhibit 31. Therefore, payment to Mr. Gorman clearly satisfies 11 C.F.R. § 9032.9(a) as it was made in furtherance of President Clinton's nomination and the obligation was incurred prior to the end of the primary.

Mary Leslie - Mary Leslie was a fundraiser for the Committee. Based upon discussions with her supervisor, Rahm Emanuel, Ms. Leslie received a \$2,500 bonus due to her performance which exceeded original goals. Ms. Leslie personally raised approximately \$594,000, as discussed previously, and had significant responsibility for all of the funds raised in California. Exhibit 31. Her bonus was determined prior to the end of the primary.

Terri Walters - Terri Walters was a fundraiser for the Committee. She received a bonus for \$2,500. Her bonus was determined based upon discussions between Mr. Watkins and Ms. Walter's supervisor, Rahm Emanuel, and represented payment for a performance which exceeded original goals. Exhibit 31. Ms. Walters personally raised approximately

\$373,000. Her bonus was determined prior to the end of the primary, and, thus, was a qualified campaign expense pursuant to 11 C.F.R .§ 9032.(a) since it was incurred prior to the date of ineligibility in connection with President Clinton's nomination.

Simon Kahn - Simon Kahn was the Director of Special Projects (Finance). Mr. Kahn received a \$2,500 bonus based upon discussions between Mr. Watkins and his supervisor, Rahm Emanuel. The bonus represented payment for a performance which exceeded original goals. Exhibit 31. Mr. Kahn personally raised approximately \$190,000. The bonus was determined prior to the end of the primary. Since the obligation was incurred prior to the end of the primary in connection with President Clinton's nomination, the payment in the amount of \$2,500 is clearly a qualified campaign expense in accordance with 11 C.F.R. § 9032.9(a).

Christine Varney - Christine Varney was Chief Counsel to the Committee. Upon Mr. Watkins' recommendation and authorization, Ms. Varney received a bonus in the amount of \$12,500 based upon a number of factors. These factors included the necessity for Ms. Varney to travel to and stay in Little Rock, Arkansas more often and for more extensive periods of time (i.e. more weekend stays) than originally contemplated when hired. In addition, the bonus represented compensation for her continuing windown work after the date of ineligibility. Exhibit 31. Payment to Ms. Varney for her legal work in connection with President Clinton's nomination is a qualified campaign expense.

Betsy Wright - Betsy Wright was Director of Research. She received a \$2,250 bonus to compensate for work done during the primary beyond that originally contemplated when the rate of pay was established. Her bonus was based upon the recommendation of the Campaign Manager, David Wilhelm and was determined prior to the end of the primary. Exhibit 31. Accordingly, Ms. Wright's bonus payment satisfies 11 C.F.R. § 9032.9(a) and, therefore, is a qualified campaign expense.

George Stephanopoulos - George Stephanopoulos was the Deputy Campaign Manager of the Committee. Mr. Stephanopoulos received a \$7,000 bonus. The bonus was determined prior to the end of the primary and was established in order to bring his total pay to the agreed yearly salary of \$60,000 per year. Exhibit 31. Since the obligation was made in connection with President Clinton's nomination and was incurred prior to the end of the primary, it is clearly a qualified campaign expense.

Shannon Tanner - Ms. Tanner was an Assistant to the Comptroller, beginning work in September, 1991, at the outset of the campaign. Ms. Tanner received a \$2,500 bonus based upon her outstanding performance and dedication during the primary. Ms. Tanner took maternity leave in September, 1992, and, subsequently, returned to the primary windown staff full-time. Exhibit 31. Accordingly, payment to Ms. Tanner in the amount of \$2,500 is a qualified campaign expense.

George Hozendorf - George Hozendorf was Drafts Coordinator for the Committee.

He received a \$5,000 bonus based upon Mr. Watkins' recommendation in recognitio—f his outstanding performance. Mr. Hozendorf's bonus was determined prior to the end of the primary and was intended to bring his rate of pay to \$2,500 per month for service from April, 1992, through July, 1992, as well as to compensate him for an anticipated short period of time assisting with primary drafts after the end of the primary. Exhibit 31. Therefore, the bonus payment to Mr. Hozendorf in the amount of \$2,500 is a qualified campaign expense pursuant to 11 C.F.R. § 9032.9(a).

Keeley Ardman - Keeley Ardman was Comptroller/Director of Compliance, beginning work at the outset of the campaign. Mr. Watkins recommended and authorized the payment of a \$7,500 bonus to Ms. Ardman in recognition of her outstanding work and in order to bring her average pay during the primary to a market rate of \$3,000 per month. The bonus was determined prior to the end of the primary. Exhibit 31. Thus, the \$7,500 payment was incurred prior to the date of ineligibility and in connection with President Clinton's nomination, satisfying 11 C.F.R. § 9032.9(a) as a qualified campaign expense.

Avis Lavelle - Avis Lavelle was Press Director of the Committee. Ms. Lavelle received partial compensation for her primary work in the amount of \$10,500 prior to the Democratic National Convention. Subsequently, in order to bring Ms. Lavelle's compensation level to the amount originally agreed upon by the Committee when Ms. Lavelle was hired, Ms. Lavelle received an additional \$8,000 payment in the form of bonus. Exhibit 31. Accordingly, the bonus payment was determined prior to the end of the primary in connection with President Clinton's nomination. Payment in the amount of \$8,000 was, therefore, a qualified campaign expense in accordance with 11 C.F.R. § 9032.9(a).

<u>Lisa Shochat</u> - Lisa Shochat was a part-time assistant with the Committee. Ms. Shochat received a \$1,500 bonus which was payment for work performed for the Committee prior to the date of ineligibility. The bonus was determined prior to the end of the primary. Exhibit 31. Therefore, payment to Ms. Shochat in the amount of \$1,500 was a qualified campaign expense.

#### c. Traveler's Cheques

Between February 13, 1992, and July 9, 1992, the Committee purchased \$179,357 in traveler's cheques from Worthen National Bank.<sup>15</sup> The purpose of the traveler's cheques was to provide per diem funds to Committee staff who had encountered difficulty in cashing Committee checks. The auditors contend that the use of traveler's cheques amounted to cash disbursements in violation of 11 C.F.R. § 102.10 and undocumented expenditures under 11 C.F.R. § 9033.11. Therefore, they recommend a repayment in the full amount of the

<sup>&</sup>lt;sup>15</sup> A listing of the Committee checks payable to Worthen Bank for the traveler's checks is Attachment 7 to the Interim Audit Report.

traveler's cheques purchased. The Committee disagrees that use of the cheques constituted cash disbursements. However, even if the traveler's cheques were cash disbursements, the auditors are incorrect in treating them as a repayment item, since the Committee kept and maintained sufficient documentation to meet the requirements of 11 C.F.R. § 9033.11.16

- o The Committee made every effort to determine that the use of traveler's cheques would be permissible under 11 C.F.R. §§ 102.10 or 102.11. Although we have not been able to locate any contemporaneous memoranda of the contacts, it is clear from the letter prepared by Keeley Ardman and the memorandum from David Buxbaum, that the Committee staff believed that it had received approval of the use of traveler's cheques. Exhibit 33. Moreover, the approach used for documenting the traveler's cheques, which the staff believes was done at the suggestion of the auditors, is indistinguishable from the permissible method of documenting petty cash expenditures, thus supporting the Committee's position that it sought and was given advice on this matter. See 11 C.F.R. § 102.11 (journal required for recording petty cash disbursements.) Since the amount of the per diem per individual per day was less than \$100 i.e., \$30, we believe that the advice to treat the traveler's cheques like petty cash disbursements fully complies with the letter and intent of the Act and regulations.

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The Committee has provided a travel policy memorandum and a log documenting at least \$159,190 of the total amount. Exhibit 33. The auditors contend that the amount of the traveler's cheques must be repaid as nonqualified campaign expenses even if they were fully documented, presumably because their use violated a law or regulation of the United States (§ 102.10). The Committee submits that this position is grossly unfair to the Committee even if the Commission concludes now that use of the traveler's checks constituted cash disbursements and was not permitted under 11 C.F.R. § 102.10. Since the Committee believes it obtained the go-ahead from the auditors to use the traveler's cheques, and kept records comparable to those for petty cash disbursements, even if the Commission concludes prospectively that traveler's cheques are more like cash than written instruments, the Committee should not be penalized.

o Finally, even if traveler's cheques are not consistent with the requirements 111 C.F.R. § 102.10, it does not follow that they are "undocumented" within the meanin of 11 C.F.R. § 9033.11. The Committee's use of traveler's cheques complies with two se; trate tests under § 9033.11: § 9033.11(b)(1)(iv) permits a Committee to provide collateral evidence of disbursements. Subsection (B) specifically permits demonstration that a payment is covered by a preestablished written campaign committee policy, such as a daily travel expense policy. The Committee distributed them pursuant to just such a policy. Attached is a copy of the Committee's travel policy, the log of traveler's cheques and an affidavit from the individual responsible for distributing the cheques. Exhibit 33.

If the Commission treats the traveler's cheques as petty cash disbursements, such disbursements are documented if a committee has a record disclosing the identification of the payee, and the amount, date and purpose of the disbursement. 11 C.F.R. § 9033.11(b)(2)(i). The Committee provided the traveler's cheque log to the auditors, and even they concede that they were "able to determine that the log supports approximately \$158,000." Interim Audit Report at 34. Thus, the Commission should conclude, in the alternative, that the disbursements were a form of petty cash disbursement, documented in accordance with § 9033.11(b)(2).

#### d. W.P. Malone, Inc.

The auditors seek additional information regarding the payments of \$63,000 to W. P. Malone on the Committee's Second Quarter 1993 FEC Report. The details concerning the services provided by W.P. Malone are discussed previously in the Response regarding the Committee's computer equipment. Specific documentation as to the \$63,000 in payments is forwarded under separate cover in response to the auditors' April 1994, requests for additional information.

#### e. Miscellaneous

New York bank account - The Committee has requested additional documentation regarding the \$5,500 from the New York bank account, and will submit it as soon as it is available.

<u>Carol Willis</u> - The Committee has requested additional documentation in support of the \$11,209 in reimbursements to Carol Willis, and will submit it as soon as it is available.

Sheraton Manhattan and New England Telephone - The Committee has requested additional documentation regarding payments to Sheraton Manhattan in the amount of \$6,489 and New England Telephone in the amount of \$7,000.

Lost and stolen equipment - Throughout the Primary, the Committee and its members exercised great care in the maintenance and security of leased equipment. The written

equipment security policy promulgated during general campaign was the culmination of the verbal policies promulgated and adhered to during the Primary. Exhibit 34. Each incident cited by the Audit Division was investigated at the time of loss for both the potential recovery of equipment and to discover any potential misconduct or gross negligence on the part of a Committee member. It is the Committee's position that there was no evidence of misconduct or gross negligence on the part of any Committee member, and thus it was unnecessary to execute the Committee's policy of withholding salaries upon the discovery of evidence of misconduct or gross negligence.

As the letter from the Committee's insurance agent, Bill Lambright, indicates, it was not commercially feasible for the Committee to have purchased insurance to cover such losses. Exhibit 34. First, in order to negotiate a deductible low enough to have permitted loss recovery, the applicable premium would have been cost prohibitive (the Committee's deductible was \$5,000). Secondly, given the staff fluctuations associated with typical campaign environments and the tremendous geographical regions that would require coverage, the cost for insurance, to the extent available at all, would have far exceeded its value to the Committee.

In light of the prohibitive cost of commercial insurance, the only commercially reasonable and fiscally responsible alternative for the Committee was self insurance. A comparison of the losses identified by the Audit Division to the total monies expended by the Committee for equipment leases in general and as compared to leases for similar equipment reveals that the Committee paid a relatively small amount for the replacement of lost equipment (the amount paid by the Committee represents only .08% of the rental equipment fees) and that ultimately, not only was the decision to self insure the only available option, but also the wisest.

## C. Determination of Net Outstanding Campaign Obligations

The Committee disagrees with the auditors' NOCO as reflected in the response to each item in this response. In addition, the Committee has included additional documentation regarding primary winding down costs. Exhibit 35.

### D. Receipt of Matching Funds in Excess of Entitlement

The Interim Reports for both the Primary Committee and the Compliance Fund seek reimbursement from Compliance to the Primary of \$1,296,517 in contributions deposited in the Compliance Fund. The auditors argue that these amounts were improperly redesignated from the Primary Committee to the Compliance Fund and therefore should be transferred back to the Primary and included as assets of the Primary Committee.

This position is incorrect for numerous reasons set out more fully below, including the following: first, under 11 C.F.R. § 110.1(b)(2(ii) over \$2,444,557 of these contributions



were in fact contributions to the Compliance Fund and no redesignation was necess: second, the Committee obtained timely statements from the contributors that these contributions were to the Compliance Fund; third, after the date of ineligibility, the Committee made the best calculation it could based on the information available to it at the time to determine the date after which the candidate would have no remaining entitlement, and the Committee should not now be penalized for having to make that calculation without the benefit of hindsight.

o Under 11 C.F.R. § 110.1(b)(2)(i), a contribution not designated in writing is considered a contribution for the next election after the contribution is made. Thus, contributions received after the date of the primary or nominating convention, as applicable, are considered for the general election. In order to be considered designated in writing for a particular election, a contribution must meet one of the following tests: (1) the check or other negotiable instrument itself must clearly indicate the particular election with respect to which the contribution is made; (2) the contribution must be accompanied by a writing signed by the contribution which clearly indicates the particular election with respect to which the contribution is made; or (3) the contribution is properly redesignated. 11 C.F.R. § 110.1(b)(4).

Under 11 C.F.R. § 100.2(b), "election" means a "general" election, "primary" election, "runoff" election, "caucus", "convention" or "special" election. The other relevant regulatory provision to this is 11 C.F.R. § 9003.3(a)(1)(iii) which states in relevant part that "contributions that are made after the beginning of the expenditure report period but which are designated for the primary election...may be redesignated for the legal and accounting compliance fund.... Contributions that do not exceed the contributor's limit for the primary election may be redesignated...only if-- (A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses; (B) The redesignations are received within 60 days of the Treasurer's receipt of the contributions; (C) The requirements of 11 C.F.R. § 110.1 are satisfied; and (D) The contributions have not been submitted for matching." (emphasis added)

The auditors focused here on whether these contributions were properly redesignated to the Compliance Fund, but, in fact, in order to have been considered primary contributions in the first instance, the regulations required that they be designated in writing for the primary. Very few of them were so designated. The Committee's vendor who processed these contributions treated them as "redesignations" even though they were not. That vendor's contract had been negotiated early in the campaign by the Committee's original counsel and included an incentive for the vendor to treat contributions as though additional documentation or affidavit was necessary. Under the contract, the vendor received an additional amount per contribution for which additional documentation or an affidavit was obtained. The Committee staff did not see these contributions until well after the election, but relied solely on the vendor's expertise to handle the contributions appropriately.

Since receipt of the Interim Report, staff have reviewed each contribution received after the date of ineligibility and the accompanying documentation. In our review, applying the principles of the regulations, the Committee has concluded that only those contributions received after that debt which specifically have "primary" or "primary debt" written on the check, or have an accompanying signed contributor card designating their contribution to the primary should have been treated as primary contributions for which redesignations for the Compliance Fund were required at all. This is the opposite approach to that taken by the auditors, but the Committee believe its approach is in compliance with the requirements of 11 C.F.R. § 110.1(b)(4). That section presumes that contributions received after the date of ineligibility are for the next election unless designated in writing for the preceding election. Instead of following that rule, the auditors made up their own rule which was that all of these contributions were for the primary unless they were designated in writing for the Compliance Fund.

The total amount noted by the auditors as "redesignated" from the Primary to the Compliance Fund is \$2,444,557. After September 2, 1992, the auditors indicate that \$924,000 was properly redesignated to the Compliance Fund. The auditors do not include this in the funds that should be transferred to the Primary Committee because they contend that the Committee received its full entitlement with the September 2, matching fund receipts. Since the Committee disagrees with this contention and believes that it was entitled to the match received on October 2, 1992, the Committee believes that the Commission's analysis will change based on this response, and thus, this response analyzes the entire \$2,444,557 in question.

In those instances where they were not totally superfluous the "redesignations" sought and obtained by the Committee's vendor merely serve as confirmation that the contributors intended these contributions to be made to the Compliance Fund since there may have been some ambiguity in the way in which the checks were made out or in the unsigned cards that were attached to the checks.

No contributions received after August 6, 1992, were submitted for matching. Of the contributions received after the date of ineligibility and not submitted for matching, more than \$2,773,327 was neither clearly designated for the primary or primary debt nor accompanied by a signed written designation for the primary or primary debt. The Committee's analysis of these contributions is attached as Exhibit 3 to the General Committee Response. These contributions were not, therefore, primary contributions because they did not meet the requirements of 11 C.F.R. § 110.1(b)(4). This number accounts for the \$2,444,557 transferred from the Primary Committee and the Suspense account to the Compliance Fund, and thus, these funds are not properly considered primary contributions redesignated to Compliance. None of these contributions were submitted for matching.

o No funds were transferred to Compliance when the contributor's intent was unclear. The "redesignations" obtained by the Committee's vendor, although redesignation was a

misnomer, serve as documentation of the contributors' intent to make contributions to the Compliance Fund. In every instance, the additional clarifying documentation was received within 60 days.

- o It became clear during August of 1992, that the campaign was receiving sufficient funds that it would be necessary to calculate a cut-off date after which no further matching funds would be sought. However, the Committee, at the time it had to make this calculation, did not have the advantage of hindsight, nor could it in any way anticipate the adjustments that the auditors would make to its accounts payable or post-election costs, many of which are vigorously disputed herein. Had the Committee been able to foresee that the auditors would consider the funds transferred to the Compliance Fund as primary contributions after the fact, it would have been necessary for the Committee to make up for these funds by raising more funds for the Compliance Fund than were raised. If the Commission were to require transfer of these funds to the Primary Committee now it would result in unfairness to the Committee because it may leave an insufficient amount in the Compliance Fund to pay continued general election winding down costs.
- o In making their calculations as to remaining entitlement, the auditors count private contributions as they are received, but count the matching funds that correspond to those contributions not when they are submitted for matching but when they are received. This leads to two problems. First, it is impossible then, to calculate the date after which no further matching funds are needed, because at the time a committee makes a matching fund submission, it cannot possibly predict how much in private contributions will be received between the date of the submission and the date of receipt of the matching funds. It would thus be far more sensible and fair to the candidate to include matching funds in the calculation as of the time of submission.

Second, this method results in unfairness to a candidate who processes contributions more slowly. For example, if contributions received during one month are not processed fast enough to be included the submission at the beginning of the following month, then there can be a two month delay in receiving the funds. This method is also likely to discriminate against candidates with a broader contributor base, i.e., a greater number of smaller contributors, because each contribution no matter whether it is \$1 or \$250 takes the same amount of time to process. It would be far more consistent with the statutory entitlement scheme and would result in more equitable treatment of candidates for the Commission to consider the matching funds at the time of submission in making the entitlement calculation.<sup>17</sup>

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<sup>&</sup>lt;sup>17</sup>The Committee believes that the Commission's approach in this regard is inconsistent with the legal concept of "entitlement." A candidate who qualifies for matching funds is entitled to receive them in an amount equal to matchable contributions raised up to 50% of the expenditure limitation. 26 U.S.C. §9034. The process would be far less costly and simpler to administer if the Commission, as envisioned by the statutory language, were to match qualifying contributions

Thus, for the reasons set forth above, the Committee disagrees with the auditors' recommendation that these funds should be transferred from the Compliance Fund to the Primary Committee.

#### E. Stale Dated Committee Checks

Attached is documentation regarding the checks remaining on the auditors' list of stale-dated checks. Exhibit 36. \$26,009.11 have been sent letters. \$11,949.89 are void and no obligation remains. \$31,566.67 were reissued and are no longer stale.

### F. Recap of Amounts Due to the U.S. Treasury

For the reasons set forth in this respnse, the Committee disagrees with the auditors' proposed preliminary repayment numbers and contends that they are vastly overstated.

#### IV. Conclusion

For the reasons set forth in this Response and the accompanying documentation, the Committee contends that the Report of the Audit Division requires substantial revision before issuance in final form. Further, the Committee disagrees with the auditors' revised NOCO and proposed preliminary repayment determination.

Respectfully submitted.

Lyn Chals

Lyn Utrecht

Counsel

Clinton for President Committee

up to the 50% limitation and seek a ratio surplus repayment once all obligations have been satisfied. 26 U.S.C. §9038(b)(3). In fact, if the Commission followed the statutory scheme it may be possible to resolve the audits within the six months contemplated in the surplus repayment provision. Id.



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#### BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

CLINTON/GORE '92 GENERAL ELECTION COMPLIANCE FUND

) MUR 4192

#### RESPONSE TO COMPLAINT

#### I. INTRODUCTION

This submission is filed in accordance with 11 C.F.R. § 111.6 in response to the complaint filed by Alan Gottlieb, Michael A. Siegel, Todd Herman, Joseph P. Tartaro, Second Amendment Foundation, Center for Defense of Free Enterprise and AmeriPAC (the "Complainants") alleging violations of 26 U.S.C. §§ 9034 and 9037 11 C.F.R. 9034.1(b) and 9003.3(a)(1)(iii)(A) and (D) by Clinton/Gore "92 General Election GELAC (the "GELAC") and Clinton for President Committee (the "Primary Committee") (together, the "Committees"). The Complaint alleges that the Committees violated 26 U.S.C. §§ 9034 and 9037 11 C.F.R. 9034.1(b) and 9003.3(a)(1)(iii)(A) and (D) by transferring \$2,444,557 from the Primary Committee to GELAC and, as a result, received \$2.9 million in matching funds in excess of entitlement.

## II. SUMMARY OF ARGUMENT

The Complaint should be dismissed because it fails to state a violation of the Act. In addition, principles of res judicata and collateral estoppel prevent the Commission from re-addressing this issue. In the alternative, the Commission should find no reason to believe against the Committees and dismiss the Complaint as legally and factually baseless for the reasons stated herein.

A. The Complaint should be dismissed because it fails to "describe a violation of a statute or regulation" as required under 11 C.F.R. § 111.4(d)(3) and, accordingly, is not a valid complaint. Even if the \$2.9 million in matching funds received by the Primary Committee were found to be matching funds in excess of entitlement as alleged by Complainants, such determination does not constitute a violation of law which is appropriately remedied by the enforcement provisions of the Federal Election Campaign Act of 1971, as amended ("FECA"). Rather, had the Commission made such a determination pursuant to the audit and repayment process, it would have ordered a repayment of such amount to the United States

Treasury in accordance with 11 C.F.R. § 9038.2. The receipt of matching funds in excess of entitlement has never been treated by the Commission as a violation of any provision of the Federal Election Campaign Act or the Primary Matching Payment Act (the "Matching Fund Act").

- B. In the alternative, assuming arguendo that the receipt of matching funds in excess of entitlement were considered a "violation" for purposes of 11 C.F.R.S. 111.4(d)(3), the Complainants' position that the Primary Committee and GELAC violated 11 C.F.R. 9034.1(b) and 9003.3(a)(1)(iii)(A) and (D) by the Primary Committee's receipt of \$2.9 million in matching funds has no factual or legal basis for two reasons. First, the Commission has addressed the issue of receipt of matching funds in excess of entitlement (including the \$2.9 million referenced in the Complaint) in the course of its statutorily-mandated audits of the Primary Committee and GELAC. The Commission determined that the Primary Committee must repay the United States Treasury \$1,383,587. That is a final repayment determination and did not include the \$2.9 million which Complainants allege was in excess of entitlement. Since the issue has already been addressed and decided by the Commission, the doctrines of res judicata and collateral estoppel prevent it from being raised again.
- Most importantly, the \$2.9 million in matching funds which Complainants allege were funds received in excess of entitlement were funds to which the Primary Committee was legally entitled. The Complaint incorrectly contends that the Primary Committee's transfer of \$2,444,557 to the GELAC of undesignated contributions received by the Primary Committee after the date of the candidate's nomination was improper because such contributions were primary contributions. As a result of the transfer, Complainants contend that the Primary Committee was able to continue to receive matching funds and received approximately \$2.9 million in funds in excess of entitlement. The Complaint incorrectly contends that such a transfer was improper. Contrary to the Complainants' position, the law is clear that these contributions were not properly designated in writing for the primary and that the transfer to GELAC was proper. Moreover, the Complaint is riddled with factual inaccuracies. Complainants' position that the funds received from July 17 to August 5, 1992 and submitted for matching were indistinguishable from the \$2,444,557 transferred to GELAC is factually incorrect.

#### III. SUMMARY OF FACTS

In accordance with the Matching Payment Act, Clinton for President Committee received matching funds for private contributions raised during the primary matching fund payment period in the amount of \$12,500,000, less than the maximum of \$13,800,000.00 to which the Committee was entitled under 26

U.S.C. § 9034(b). After the date of nomination, the Primary Committee established a suspense account into which contributions were deposited pending determination of their proper disposition. The Primary Committee properly transferred \$2,444,557.00 in contributions which had been deposited in the suspense account after the nomination. Although the Committee had received redesignations from the Primary to the GELAC for these contributions, the redesignations were unnecessary because by operation of law the contributions were GELAC contributions. In connection with the audit of the Primary Committee, the Commission issued a repayment determination in the amount of \$1,383,587 which included, inter alia, a repayment amount of \$1,072,344 for matching funds received in excess of entitlement. The Commission considered the issue of \$2.9 million referenced in the Complaint as well as the \$2,444,557 transfer to the GELAC when it addressed the issue of receipt of matching funds in excess of entitlement. The Commission did not find that the transfer was improper or that the \$2.9 million in matching funds were in excess of entitlement.

## IV. THE COMPLAINT MUST BE DISMISSED BECAUSE IT IS LEGALLY AND FACTUALLY BASELESS

1. The Receipt of Matching Funds in Excess of Entitlement Is Not A "Violation" of the Presidential Primary Matching Payment Account Act And, Therefore, Is Not Subject to An Enforcement Action

The Commission's finding that a committee had received matching funds in excess of its entitlement is not a violation. Rather, it results in a repayment determination. The Matching Fund Account was established to provide partial public financing to the campaigns of eligible presidential primary candidates. The receipt of public matching funds in excess of entitlement is addressed in the Regulations at 11 C.F.R. 9034. Eligible candidates are permitted to receive matching funds for all matchable primary contributions received prior to the date of ineligibility regardless of whether the primary campaign is operating in a surplus or deficit position. The Regulations state that, if, on the date of ineligibility, a candidate has net outstanding campaign obligations the candidate may continue to receive matching funds for contributions received and deposited on or before December 31 of the Presidential election. 11 C.F.R. 9034.1(b). The Primary Committee's statement of net outstanding campaign ooligations ("NOCO") reflected a deficit position on the date of ineligibility so that pursuant to 11 C.F.R. 9034.1, the Primary Committee was entitled to continue to receive matching funds.

After the Convention, the Commission's Audit Division reviewed Committee records in accordance with 26 U.S.C. 9038 to determine whether any repayment of funds will be required. The Regulations explicitly state that

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information obtained pursuant to an audit may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 C.F.R. 9038.2 The Regulations state that a repayment may be required where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 C.F.R. § 9034.5 as of the date of ineligibility. Accordingly, the law clearly acknowledges that the NOCO statement may be adjusted and may result in a determination that a committee had received matching funds in excess of entitlement. Such a finding by the Commission is not a finding of a violation. Rather it results in a repayment determination.

A retroactive finding of receipt of funds in excess of entitlement has never been treated as a violation of anything and we fail to see what provision would be violated. A Committee, when calculating its NOCO and thus determining a cut-off date after which no further matching funds will be sought, does not have the advantage of hindsight that the auditors have years later when re-calculating the NOCO nor can it anticipate the adjustments that the auditors would make to its accounts payable or post-election costs. Many primary presidential campaign NOCOs statements are revised by the audit division with hindsight and this frequently results in a determination that matching funds have been received in excess of entitlement.

While there are certainly some Title 26 repayment matters that may also be the subject of a Title 2 enforcement action, this is not such a case. These including knowingly exceeding state or national spending limits 11 C.F.R. 9035, 1(a)(i), and receiving prohibited or excessive contributions. There was no excessive spending here, nor was there any excessive contribution received. Thus, there was no violation.

2. The Doctrines of Res Judicata and Collateral Estoppel Prohibit the Commission from Addressing Complainants' Issues Again in the Enforcement Context

Even, assuming arguendo, that the receipt of public funds in excess of entitlement were a matter subject to the enforcement process, Complainants are estopped on the basis of res judicata and collateral estoppel from raising this issue in an enforcement action because this issue has already been addressed in the audit context and the Commission has already issued a final repayment determination. The Commission did not find that any repayment was due; no violation could have occurred.

3. The Primary Committee Did Not Receive \$2.9 Million In Public Funds in Excess of Entitlement Because The \$2,444,557 in Contributions Received By The Primary Committee After The Date of Ineligibility Were Properly Considered GELAC Contributions

The transfer of \$2,444,557.00 from the Primary Committee to the GELAC was a permissible and proper transfer because the contributions were in fact intended for GELAC.

A. Under the Regulations, The Contributions
Were Properly Considered as GELAC Contributions

Under 11 C.F.R. § 110.1(b)(2)(ii) the \$2,444,557 in contributions questioned by Complainants were in fact contributions to the GELAC and no redesignations were necessary. To the extent that contributions may have been ambiguous or unclear, the Committee obtained timely statements from the contributors that these contributions were GELAC. Thus, these contributions were properly transferred to GELAC.

The Committee provided the Commission with an analysis of the funds received by the Primary Committee which demonstrated that these contributions were undesignated in accordance with 11 C.F.R. 110.1(b)(2) and, therefore, were intended for the next election.<sup>1</sup>

The Regulations at 11 C.F.R. 110.1(b)(2)(i) provide that a contribution not designated in writing for a prior election is considered a contribution for the next election after the contribution is made. Thus, contributions received after the date of the primary or nominating convention are considered for the general election. The regulations are quite specific as to what constitutes a written designation: (1) the check or other negotiable instrument itself must clearly indicate the particular election with respect to which the contribution is made; (2) the contribution must be accompanied by a writing signed by the contributor which clearly indicates the particular election with respect to which the

The Auditors' assertion in the Interim Audit Report that these contributions were received in response to primary solicitations is factually inaccurate. Of the contributions received after the date of ineligibility and not submitted for matching, more than \$2,773,327 was neither clearly designated for primary or primary debt nor accompanied by a signed written designation for the primary or primary debt. Moreover, the timing of the receipt of the contributions confirms that they were not received in response to a solicitation. Most of these contributions were received over a month after the Convention. In addition, the Auditors' statement in the Interim Audit Report that some of the funds transferred to GELAC were also submitted for matching is a blatant misrepresentation. None of these contributions were submitted for matching. Finally, the Auditors' contention that the funds transferred to GELAC are indistinguishable from those funds submitted for matching from July 17 to August 5 is factually inaccurate.

contribution is made; or (3) the contribution is properly redesignated in accordance with 11 C.F.R. 110.1(b)(5). See 11 C.F.R. 110.1(b)(4).

Under 11 C.F.R. 100.2(b), "election" means a "general" election, "primary" election, "runoff" election, "caucus", "convention" or "special" election. The other relevant regulatory provision to this is 11 C.F.R. 9003.3(a)(1)(iii) which states, in relevant, part that:

contributions that are made after the beginning of the expenditure report period but which are designated for the primary election . . . may be redesignated for the legal and accounting GELAC . . . Contributions that do not exceed the contributor's limit for the primary election may be redesignated . . . only if -(A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses; (b) The redesignations are received within 60 days of the Treasurer's receipt of the contributions; (c) The requirements of 11 C.F.R. 110.1 are satisfied; and (D) The contributions have not been submitted for matching. (emphasis added)

The Complaint erroneously states that these contributions were not properly redesignated to the GELAC. However, in order to have been considered primary contributions in the first instance, the regulations required that they be designated in writing for the primary.

The Regulations explicitly state that only those contributions received after the debt which specifically have "primary" or "primary debt" written on the check, or have an accompanying signed contributor card designating their contribution to the primary should be treated as primary contributions. 11 C.F.R. 110.1(b)(4). In addition, the Explanation and Justification for the designation regulations at 11 C.F.R. of 110.1(b)(4) provides specifically that the contributor must sign the contributor form order to designate a contribution to a particular election. "A question has also been raised as to whether contributions received in response to a solicitation for a particular election should be considered to be a designation for that election. Uni'er new 110.1(b)(4), the contributor would be able to effectuate a designation by returning a preprinted form supplied by the soliciting committee that clearly states the election to which the contribution will be applied, provided that the contributor signs the form, and sends it to the committee together with the new contribution." (Federal Register, Vol. 52, No. 6, p. 763.) (emphasis added). In addition, the Explanation and Justification provides that "the timing of a contribution is of significance in several situations. For example, the date on which an undesignated contribution is made will determine whether the contribution counts against the contributor's limit for the primary or general

election." (Federal Register, Vol. 52, No. 6, p. 763).

As the Committee explained in response to the Interim Audit Report, the vendor who processed these contributions treated them as "redesignations" even though they were not. That vendors' contract had been negotiated early in the campaign by the Committee's original counsel and included an incentive for the vendor to treat contributions as though additional documentation or affidavit was necessary. Under the contract, the vendor received an additional amount per contribution for which additional documentation or an affidavit was obtained. The Committee staff did not see these contributions until well after the election, but relied solely on the vendor's expertise to handle the contributions appropriately.

To the extent that these redesignations were not totally superfluous they served to confirm that the contributor's intended these contributions to be made to the GELAC since there may have been some ambiguity in the way in which the checks were made out or in the unsigned cards that were attached to the checks.

B. The Commission's Practice and Policy Confirms That The Funds Transferred to The Compliance Fund Were Not Primary Contributions

The explicit language of the Regulations is confirmed by Commission decisions in advisory opinions, matters under review and prior audits.

- 1. The Commission's ruling in AO 1990-30 directly supports the conclusion that these contributions were not properly designated for the primary. In Advisory Opinion 1990-30, the Helms for Senate Committee had outstanding debt after its 1990 general election. In order to satisfy the debt, the committee solicited campaign contributions that advised contributors to designate their contributions for retirement of the campaign debt. The Committee received a considerable number of checks without the appropriate written designation thus requiring the committee to obtain redesignations. In order to eliminate the cost of the cost of this process, the committee proposed the following steps:
- a. It would stare on the solicitation that the contribution would be used to pay general election debt;
- b. It would repeat the same statement on the contribution slips and include an additional line on the disclaimer stating that the funds would be used to retire general election debt; and
- c. Finally, the committee would not solicit any other contributions other than to satisfy the debt. Despite these steps, the Commission

ruled that this procedure would be inadequate to satisfy the regulations. The FEC dismissed the notion that attaching an undesignated check to the donor card would by itself be sufficient to indicate determine intent, even though the card and solicitation state specifically that the contributions are being requested to retire campaign debt. AO 1990-30 states explicitly that in order to confirm donor intent, the regulations require that the contributor's signature appear on the same document that contains the words of designation, i.e. the check or the contributor slip.

Commission policy and practice recognizes the importance of donor intent. The determination of whether a contribution is designated for a particular election turns on the contributor's donative intent. (See General Counsel's Legal Analysis accompanying Clinton for President Draft Final Audit Report.)

The Commission has also ruled that the date of a contribution is determinative of donor intent. (See MUR 1491 in which the Commission determined that an undesignated contribution made on the date of a primary runoff election must be attributed to the primary election because it was made during the primary election. See also, MURs 1492, 1638.)

And, further, the payee of a check has never been considered adequate evidence of proof of donor intent. In MUR 2139, checks were made payable to a political committee that held a fundraiser to benefit a candidate committee. Despite the fact that the checks were made payable to the political committee, the Commission ruled that the contributions had to be attributed to the candidate committee because of donor intent. In addition, a loan guarantee made after a candidate's primary election was deemed to be a general election contribution despite the fact that \$25,000 of the loan was to be used to pay off a \$25,000 loan taken during the primary to purchase media for the primary election.

C. Equitable Principles Dictate That The \$2,444,557 Transfer To The Compliance Fund Be Considered General Election Contributions

Equitable considerations also dictate that the \$2,444,537 transfer be deemed proper and, accordingly, that the \$2.9 million not be treated as funds received in excess of entitlement.

A finding of reason-to-believe by the Commission in this case would also result in disparate treatment of incumbents and challengers. Because incumbents often use a similar name for both primary committees and GELAC committees, checks made payable to them often have identical names. This gives them a great deal of discretion as to how to attribute contributions. In this case, clearly the \$2,444,557 represented contributions from contributors who intended to contribute

to the general election, although the payees listed may not have included Al Gore's name. Individuals contributing at that time clearly intended to make a general election contribution.<sup>2</sup> During the period that this money was received, President Clinton and Vice-President Gore were actively campaigning for the general election, conducting fundraising events, giving speeches and travelling on high visibility bus trips. In addition, most of this money was received more than a month after the Convention.

Finally, in no other instance has the Commission pursued an enforcement action where the complainant has alleged that the respondents received matching funds in excess of entitlement after a final repayment determination has been issued. This Complaint provides no basis for doing so in this instance.

#### CONCLUSION

For the reasons stated herein, Clinton for President Committee and Clinton/Gore '92 General Election Compliance Fund request that the Commission dismiss the Complaint because (1) it is insufficient under 11 C.F.R. § 111.4(d)(3) or (2) that principles of res judicata or collateral estoppel prevent the Commission

The signed contributor forms clarify that these contributors were specifically notified that these contributions were for GELAC and were not for primary activity.

from re-addressing this issue; or, in the alternative that there is no reason-to-believe that the Committees violated 26 U.S.C. §§ 9034 and 9037 and 11 C.F.R. 9034.1(b) and 9003.3(a)(1)(iii)(A) and (D).

Respectfully submitted,

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LAURA RYAN WAS KIOWN to the Androma As LAURA Shaehoy.) 24002-24069: Correspondence/Memos between POC/Andersons and the CPC

## **Documents:**

240028.3/24.1 09-18-91 Early sales memo to Clinton Exploratory Committee 24004/24.2 09-18-91 From sales material to Clinton Exploratory Committee 24003/A 10-08-91 Watkins to Anderson courtesy note 24006-09/B 11-14-91 Ifshin memo re urgency for CPC to qualify for matching funds 24011/D 11-18-91 POC to CPC staff re success of finishing qualifying report 24011/D 11-18-91 POC to CPC re magnetic tape issues 24012/E 11-22-91 CPC (Ardman) to POC re follow-up action on procedural issue 24013/F 12-06-91 Anderson to Ifshin ("original counsel") and co-counsel Friedman 24013/F 12-06-91 Anderson to Emmanuel re timeliness of thank you letters 24015/H 02-11-92 Bill Anderson to Watkins re political strategy 24016-20/I 02-17-92 Watkins to Anderson re POC helping with loans for CPC 24021-24/I 03-23-92 Ifshin to various CPC re strategic purchases for general election 24025/K 05-21-92 Watkins's request for POC's ideas and proposals for general election 24026-32/L 06-15-92 POC memo in reply to Watkins's request for proposal 24033&34/M 06-30-92 Memo advising Andersons CPC will do general election in-house 24033&34/M 06-30-92 Memo advising Andersons CPC will do general election in-house 24037&38/O 07-22-92 Anderson memo to Watkins 24037&38/O 09-10-92 Anderson memo to Watkins 240404-43Q 09-10-92 Bill Anderson to Watkins re idea for campaign 24041-43Q 09-10-92 Bill Anderson to Watkins re idea for campaign 24044&45/R 10-08-92 Memo from Bill Anderson to Watkins 24044&45/R 10-08-92 Memo from Bill Anderson to Watkins regarding good work 24046&47/S 10-28-92 Memo from Bill Anderson to Watkins regarding good work 24046&47/S 10-28-92 Memo from Bill Anderson to Watkins regarding good work 240404/P 02-17-93 Anderson again asking that POC be paid 240404/P 02-17-93 Note from Mark Middleton re note Waks sent re taxes 24050/W 06-07-93 Note from CPC staff - asking that POC be paid 24051/W 06-07-93 Note from CPC staff - asking that POC be paid				
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24006-09/B 24010/C 11-18-91 POC to CPC staff re success of finishing qualifying report 24011/D 24011/D 11-18-91 POC to CPC staff re success of finishing qualifying report 24012/E 11-22-91 CPC (Ardman) to POC re follow-up action on procedural issue 24013/F 12-06-91 Anderson to Ifshin ("original counsel") and co-counsel Friedman 24014/G 01-22-92 Anderson to Emanuel re timeliness of thank you letters 24015/H 02-11-92 Bill Anderson to Watkins re political strategy 24016-20/I 02-17-92 Watkins to Anderson re POC helping with loans for CPC 24021-24/J 24026-32/L 03-23-92 Ifshin to various CPC re strategic purchases for general election 24026-32/L 06-15-92 POC memo in reply to Watkins's request for proposal - note relationship is very good - note comments re accuracy/clean-up Little Rock accounting data - note reference of amendments - note POC not generating debt/obligation data for FEC 24033&34/M 06-30-92 Memo advising Andersons CPC will do general election in-house - note expenditure portion of POC's contract expired - note reference to clean-up of data before amendments - note expenditure portion of POC's contract expired - note reference to Watkins - POC lowers unit price due to volume 24037&38/O 09-10-92 Anderson memo to Watkins - note POC lowers unit prices again - note POC lowers unit prices again - note POC requests names of contributions being shifted to Compliance 24039&40/P 24041-43Q 10-03-92 Warney memo to Pat Anderson - note unitsual tone of letter - note "distress" over minor incident - note offer for Little Rock to support POC - note unreasonable date of Oct 31 for filing deadline 10-08-92 Anderson memo to Reilly re overlimit redesignations (Refer to Documentary With References Sections 17.0 & 18.0 - and documents in Tab 13 for more details.) 24046&47/S 10-28-92 Memo from Bill Anderson to Watkins regarding good work of POC and future data management needs of Clinton et. al note Andersons going to Little Rock to join celebration 24048/T 20-17-93 Note from Mark Middleton re note WRA sent re taxes	24004/24.2	09-18-91	From sales material to Clinton Exploratory Committee	
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24048/T 02-17-93 Anderson to CPC staff - asking that POC be paid 02-19-93 Note from Mark Middleton re note WRA sent re taxes 24050/V 06-07-93 Anderson again asking that POC be paid			of POC and future data management needs of Clinton et. al.	
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24050/V 06-07-93 Anderson again asking that POC be paid	24048/T			
	24049/U	02-19-93	Note from Mark Middleton re note WRA sent re taxes	
24051/W 06-07-93 Note from CPC staff enclosed with payment 240000	24050/V	06-07-93	Anderson again asking that POC be paid	
	24051/W	06-07-93	Note from CPC staff enclosed with payment	24000

## Documents in Tab 24 (continued):

24052/X	06-15-93	Anderson again asking that POC be paid
24053/Y	07-01-93	Anderson cutting services to CPC for non-payment
24054/Z	07-02-93	Anderson acknowledging payment and requesting timely payment
24055&56/Z.2	07-09-93	Pat to Bill re Utrecht's request for memo re POC's errors
		- note the "errors" total only four (a wonderful record)
		- note the "errors" were quite minor, if error is even the term
24057&58/Z.3	07-09-93	Pat to Bill, same day, Pat very upset
		- note Pat states "I am so proud of our record"
24059&60/AA	07-09-93	Bill Anderson to Utrecht
		- note comment re lowered prices
		- note "team player"
		- note Utrecht only asked about "four" minor errors
		- note memo re errors was required BEFORE POC could be paid
24061/AA.1	02-06-95	Anderson memo to Utrecht re strange meeting
		- note Anderson states Utrecht's requests are unusual
24062		- note inventory of documents in storage on backside
24063&64/BB	02-16-95	Utrecht memo to Anderson re same issue (regaining control)
24065&66/CC	03-24-95	Anderson memo to White House general counsel Abner Mikva
		- note Anderson's tone is very calm but explicit
		- note attachments to letter outlined CPC's false statements
24067/DD	03-31-95	Anderson to Utrecht re turning over storage room
24068/EE		(Hard to read) note re transfer of keys for storage room
24069/FF	05-31-95	Official termination letter

#### MEMORANDUM

DATE: September 18, 1991

TO: Mat Gorman and David Watkins

Clinton for President Exploratory Committee

FROM: Pat Anderson, Public Office Corporation

Thank you for your time several days ago when I called to tell you about the specialty of our computer company: presidential primary matching funds and comprehensive contributions management.

This notebook starts with some historical information about our company followed by a key contacts sheet.

The outline I use for my matching funds presentation begins the "Things To Consider" section. We can go through the more important items in the outline over the telephone. You are welcome to include others at your end via a conference setup.

In that same section, I have included several "short subjects" to give you some idea of our thinking on (1) Minimum setup in Little Rock, (2) Overview of Main Donor Database input/output, (3) example on the detail of maximization of matching funds, and (4) a beginning list of other issues that need discussing.

The third section contains some suggestions about the types of databases we can manage most effectively for you. Your campaign will need other types of computer support, of course, but we have lots we can contribute to helping you manage the data in the databases we listed.

The fourth section contains samples of our contribution management output. On our powerful system, it is true: Your ability to store and recall information is limited only by your ability to gather it.

The final section, About Costs, contains information about our services and prices for campaigns. A presidential primary campaign is an ordinary campaign "plus." I have put in some "ballpart" comments that might be of interest to you.

As you read, you will begin to understand our meaning of the word "comprehensive." We have been in the business a long time; we know what to anticipate that others might not realize. When comparing our prices, all we ask is that you make sure you are comparing the same quality AND quantity of services.

24002

-24-1,

If I didn't think we could support Governor Clinton's campaign given the proximity of our two bases, I wouldn't take my time to write you. We have supported large races "over the phone" before. We have excellent references. We are expert in this area. I believe we can make a million dollar difference to a major presidential campaign where their matching funds are handled correctly FROM THE VERY BEGINNING.

Getting off to the right start is the key to success. It is reasonable for a NEW organization developing a NEW system to take 90 days to get it going. Often it takes months to perfect.

Unfortunately, your campaign is a "start-up organization" that must perform like a slick machine if it is to meet the awesome task of raising and managing millions of dollars in a very short period of time -- usually just 6 months or so.

This time around, the FEC has imposed stricter requirements for the "reattribution" (splitting) of contributions by requiring that the affidavit (additional documentation) must be dated within 60 days of the receipt of the contribution.

It is ESSENTIAL that "early money" coming into your campaign be processed perfectly, daily, as it comes in. Presidential matching funds management begins the moment you open the envelope containing a "written instrument," as the FEC so quaintly refers to checks, money orders, and the like.

#### We are ready to go.

We have worked on 4 presidential races. In every race we learned something new, learned how to do it better. We improved our procedures and techniques with every new challenge and every campaign. We can show you where campaigns, including some that we have been involved with, have left a lot of matchable money "on the cutting room floor."

Confidence and a willingness to work hard just aren't qualification enough when so much is at stake in such a short period of time.

Put simply, we can make your jobs a lot easier with a worry level of near zero. That will leave you both time to concentrate on other matters that only you can handle (and there will be plenty of them).

Please give me a call with any questions. Thank you for your consideration.

Sincerely.

Patricia W. Anderson President Location: Little Rock

Equipment provided by POC: - one video terminal with attached laser printer

- one hard-copy terminal on which to print deposit

slips, labels, etc.

Personnel required: - minimum one "key" operator/caging supervisor

- trained by POC on-site in Little Rock

- supported by POC's 24/hour, 7 days a week Hotline

Responsibilities: - provide "caging" service for campaign as

described on following page

- send one set of check copies to POC

- keep one set in Little Rock for reference

Capabilities: - immediately (as the money goes to the bank) print out deposit reports for dissemination of that day's fundraising results/information (for fund raising centers, direct mail specialists, etc.)

- produce thank you letters and envelopes
- produce other types of letters and envelopes
- print lists, labels, 3x5 cards, etc., as required
- input records into "contact" database so that volunteers, staff, key contacts, convention delegates, etc. can be tracked and any type of communication generated
- call up on the screen any contributor in the contributor database

Communication: - video terminal and printer are communicating with main computer in Washington via regular telephone lines; should volume require, leased lines can be installed and multiple terminals setup in Little Rock, each having simultaneous access and production capability using the data in the main contributor database

Timing: - The sooner the better to get started with minimum setup and training.

- POC can take equipment to and train "key" personnel in Little Rock; it is better to do this sort of thing as early as possible.
- POC personnel will remain on-site until things are running very smoothly; POC personnel would be available to "shore up" Little Rock staff where large volume requires it.
- Expandability: The POC system is a powerful, multi-user computer; expanding to the degree necessary to support a national race is well within the capabilities of POC's hardware, software, and support experience.

24004



October 8, 1991

Patricia W. Anderson 911 Second Street, N.E. Washington, DC 20002

Dear Pat:

Thank you for contacting us regarding your interest in helping Governor Clinton in his presidential campaign.

As the campaign progresses we will need a variety of products and services. As we determine those needs we will keep your offer in mind.

We really appreciate your interest in helping Governor Clinton.

Sincerely,

David Watkins

LAW OFFICES

## Ross & HARDIES

A PARTNERS OF DICLLOUIS PROFESSIONAL CORPORATIONS

BBB SIXTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-4103

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Maria	- A	T (202) 296-8600.	

24006

The information contained in this factivile senses is attractly privileged and confidential information intended only for the use of the individual or entity never above. If the reader of this manage is not the interied recipient, or the employee or agent responsible to deliver it to the intended recipient, you are bereby notified that any dissemination, distribution or copying of this - commication is strictly prohibited. If you have received this commication in error, please immediately notify us by telephone, and return the original proceeds to us at the above address via the U.S. Postal Service. Think you.

M

#### MEMORANDUM

TO: David Wilhelm

FROM: David Ifshin

DATE: Matching Funds

RE: November 13, 1991

The compression of the first stages of the campaign into a narrow window of several weeks rather than many months or even years has made certain mechanical functions even more formidable than in the past. The conference call we had last week underscored the amount of concentrated effort required to qualify to be on the ballot and slate delegates in all 50 states as well as other jurisdictions. An equally critical challenge involving several components of the campaign confronts us in the matching fund area.

While there have been many discussions about this task, I thought it might be helpful to review where we stand today and what remains to be done. The matching funds program requires the coordination of three groups: our fundraisers, the team preparing the actual submissions and our lawyers. As you know, in order to qualify for matching funds a campaign must raise a minimum of \$5,000 in 20 or more states in amounts of \$250 or less from 20 or more contributors in each state. The submission of documentation to the FEC demonstrating that a campaign has qualified for matching funds is known as the threshold submission. Campaigns that have been certified as meeting the threshold may then make submissions once a month (as opposed to bi-monthly in previous campaigns) of documentation supporting our entitlement to federal matching funds.

The threshold submission may be made at any time after January 1 of the year prior to the election, i.e. January 1, 1991. In previous presidential election cycles, matching fund submissions were made much earlier in the cycle. The late start of the 1992 campaign has added an unforseen factor to the FEG staff's workload. Rather than having most of 1991 to review and certify threshold submissions, they recently realized that six or seven campaigns all would be submitting at the eleventh hour. As is reasonable, they became concerned whether they would have adequate resources to review and certify all of the campaigns before additional submissions were received.

The Commission's regulations, including the new revisions, did not envision this scenario. The regulations only require the Commission to act within fifteen business days on a threshold submission made by a campaign after January 1, 1992. There is no

requirement or regulation on those being made now. The Commission did determine a few weeks ago that the first matching fund submissions (not necessarily threshold) could be made on December 2. The Commission's audit staff, understandably concerned about whether they would have the time to complete the review of all of the threshold submissions prior to that date informally spread the word through the comptrollers of the campaigns with whom they routinely deal that the threshold submissions should be made by Friday November 8 if the campaigns wanted to be "guaranteed" that they would be acted upon by December 2. I confirmed with the head of the FEC audit division yesterday that that date has no legal significance and that the Clinton campaign received no notice of it.

The campaign is planning to make our threshold submission this Friday. That is certainly permissible in the eyes of the Commission and the audit division although they are eager to get started reviewing the thresholds as soon as possible. It is during that review that many of the problems in the way the campaign is preparing its submissions are identified and cured.

While I expect that if the money is raised and POC is able to complete the threshold submission despite its late start that the Commission is likely to certify us prior to December 2, no one should take anything for granted. A real possibility continues to exist that we may have problems with the Commission due to the following realities:

- 1) as of this hour, we have not submitted to POC the documentation necessary to certify the threshold submission, much less the cushion recommended in the Commission's guidelines for Presentation in Good Order.
- 2) the campaign lost an inordinate amount of time contemplating the question of how the documentation for matching funds would be assembled. After an unsuccessful effort to assemble a capacity to do it in-house, POC was finally given the green light to proceed.

I have the assurances of the head of the Audit Division that our submission on Friday would not in any manner prejudice us. He agreed fully with my interpretation as described above and stated that the only consequence is that rather than guaranteeing they would turn it around in the remaining days he could only assure us that he would do everything possible to do so.-

It is impossible to overstate the importance to us of the good will of the auditors. At the end of the day, they have great discretion in many matters that are or will become critical to us. I have explained to the head of the Audit Division that the reason for our submitting our threshold submission this Friday rather than last is that the change over to POC has provided us with a more reliable format that will make their job easier. While he was supportive, there is no guarantee that our

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submission on Friday will be certified by December 2. Under the new regulations, there is no real dispute among lawyers that since there is no time period for making a threshold submission prior to January 1. While it may be legally correct, however, it will be of little comfort if the auditors get their backs up.

Our situation is best enhanced by our taking the following immediate steps:

- 1) No effort should be spared by the Finance staff in exceeding the minimum requirements for the threshold and making sure our documentation is correct. Given the number of days left, we need to make sure our error rate will not result in less than 20 states being approved by the auditors for certification by the Commission.
- 2) I have spoken with Keeley about the desirability of her having direct conversations with the auditors as soon as possible. The auditors are not always comfortable talking to their own lawyers, much less lawyers who inevitably will become adversaries later. While we should be careful not to discuss specific factual problems, general conversations about systems, documentation and the auditors expectations are invaluable to us. Those discussions need to begin at once.
- 3) In the press of events, we need to finalize our deal with POC and reduce it to a signed contract. It is not in our interest to have different expectations between us and POC about their role and compensation.
- 4) Once our threshold submission is made Friday, we may need to continue preparation of a supplemental submission if we believe there is any real chance of falling short of the minimum for certification.

cc: David Watkins
Stephanie Solien
Keeley Ardman
Rohm Emannuel
Pat Anderson
Bruce Lindsey

DATE:

11/18/91

(7AX DATE 11/20/9,

TO:

Keeley Ardman David Wilhelm David Watkins

Doug Heyl

cc: Phil Friedman

FROM:

Pat Anderson Public Office

RE:

Threshold Submission and Bank Documentation

As you know by now, the Clinton for President Committee's threshold submission to the Federal Elections Commission was formally received by the FEC at 4:00 p.m. on Friday, November 15.

Phil Friedman met me there. He had the 9033 letter and the Treasurer's Certifications. I brought the bank documentation, the NSF listing, the statement of no refunds, the STATE/ALPHA listing of the contributors on the submissions, and the state/alpha copies of the checks and supporting documentation where applicable. Phil and I talked with Ray Lisi (202/219-3720) at the FEC; Ray received the submission.

I must say that the tone of the FEC in person is a lot friendlier than one might assume from reading their documentation. At no time did I get the feeling that it was "us" against "them." I believe that they are sincerely trying to maintain a helpful stance and as long as we are sensitive and responsive to their needs, the interests of the Clinton Committee will benefit greatly.

I know the FEC is already processing this submission because they called early today about a glich in the tape we took over Friday. I have reprocessed another tape and it is already in their hands (12:45 p.m. 11/18).

The FEC also required additional documentation from what I had regarding the NSF debit memos from the bank; Keeley has supplied me with what I think I am missing. Thanks Keeley.

Based on what I learned from the FEC, I am sending to Keeley, under separate cover, my recommendations as to how we might manage the NSF items and the bank documentation in general vis-a-vis the FEC.

I am also sending under separate cover some ideas on SOP for all future submissions as well as my "updated" thoughts on how we proceed in just the next few days (between today and the December 2 initial submission).

In the meantime, PCC is maintaining a posture whereby we can very quickly respond to the needs of the FEC and supplement, augment, or replace items on our threshold submission.

I am sending you a copy of the threshold submission in today's mail.

I want to thank everyone in Little Rock for their support and cooperation during this past week especially Doug Heyl who tracked down and secured the untrackable and the unsecurable. Without his dogged determination we simply wouldn't have been able to qualify in enough states to make the submission last Friday.

Incidentally, the stats are: 22 states submitted for a total of \$131,595.

DATE:

11/18/91 (memo FAX date 11/20/91)

TO:

David Wilhelm, Keeley Ardman David Watkins, Sherry Curry

FROM:

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124

Pat Anderson, POC

Less than two weeks have passed since we received our first shipment of check batches from campaign headquarters in Little Rock. We are making progress; POC is happy to be part of the team.

We are maintaining two fronts: (#1 front) we are ready to supplement the present threshold submission if necessary and, (2) we are forging ahead on the assumption that the Clinton Committee will be approved in time to go in on December 2 with as much matchable money as possible.

We are willing to do our part by applying as much staff effort as practical, without compromising quality. We need help in the following area: MAGNETIC TAPE of ARKANSAS CONTRIBUTORS.

We were given a magnetic tape on Friday, Nov 8, but it was not an industry standard, 9-track as we had requested and required. After delving into the reasons, it seems there were several issues: (1) it would have taken a programmer a long time to produce an industry standard tape that contained the contribution data plus other attributes about the contributor that would enhance fundraising and FEC submissions; and (2) the relocation of the computer system to Little Rock campaign headquarters made access to the 9-track tape drive difficult if not impossible.

Due to the urgency of the matching funds submission, we "forgot" about the cartridge tape in hand, which we would have had to take to another vendor to put on 9-track, and then we would have had to spend an unknown amount of time foraging our way through variable-formatted data. We decided a surer, faster solution to our immediate problem was to tackle it with brute, manual force.

In fact, it looked like getting what we needed in time to be of help even for the December 2 submission was so remote, on November 12, I suggested to Sherry Curry just to put the tape business on hold temporarily.

IT IS TIME TO RE-FOCUS ON THE ENORMOUS HELP THAT TRANSFERRING THIS DATA NOW COULD BE TO THE MOST IMPORTANT TASK AT HAND: the December 2 submission.

The present situation is this: we have on our computer at least the basic name/address data for the contributors from states other than Arkansas. It occured to me yesterday that if we could get the basic name/address data on tape for the ARKANSAS presidential contributors, POC would slap in the elements of the actual contribution (date, batch #, check #, amount, event, etc.).

Please let me know if you agree and can provide the tape. And if so, when? TAPE DESCRIPTION: 9-track, fixed length, fixed format (ASCII or EBCDIC, unlabeled), 1600 BPI prefix, name/suffix, spouse, address, occupation, employer, all telephone numbers, and anything else you can send EASILY and QUICKLY - just include a tape layout regarding full record length, organization of fields and their respective lengths, and number of records on tape.

PS: I wrote this memo on Monday and passed along the information to Keeley regarding my tape request. I realize, however, that this memo is not going out until this morning, 11/20/91. Sorry for delay in hardcopy.



#### MEMORANDUM

To: Pat Anderson

Public Office Corporation

From: Keeley Ardman LA

Comptroller, Clinton for President Committee

Date: November 22, 1991

RE: Debit Memos

At your request, I called one of our bank officers, Ms. Lena Rennie, at Worthen National Bank, Little Rock, regarding the debit memos sent to us as they pertain to returned checks from contributors. I requested that the name of the individual whose check was being returned be put in to the "maker" line on the memo.

While the bank's automated computer system cannot do this, the bank has agreed to type the name in the maker line before forwarding the memo to us.

Hopefully this will clear up any questions.

Let me know if something more is required.

Thanks!

. :

DATE: 12/6/91

TO: David Ifshin and Phil Friedman

FROM: Pat Anderson

RE: POC Invoice #1 to the Clinton Committee

Enclosed is a copy of the invoice and cover memo sent to David Wilhelm yesterday.

What I plan to do is AGGRESSIVELY pursue splitting joint account contributions and finding spouses on single-account large checks. We will also study the database looking for every opportunity to maximize matching funds.

We figured the cost for managing Simon's database to maximize his funds: we brought in more than \$4 dollars for every \$1 spent and that was when we were working with money that was already more than a year or two old. We should easily be able to do better than that with Clinton's fresh money — people haven't moved — they haven't sourced on the candidate — they are cooperative because it is all fresh on their minds.

POC wants to do an outstanding job. However, we expect for this perfection to more than pay for itself so that by comparison, the Clinton committe is paying LESS money than anyone else for INFERIOR services.

How? We believe — we know — that the impact we can make on this campaign, if we are free to do what needs to be done, when it needs to be done, vis-a-vis managing this database toward maximizing matching funds, can be at least one million dollars over the next 3-4 months.

I can't take the time to figure this thing out three ways and make arguments for each. I can't afford to take any more time talking about money until all the affidavits are out for this month.

After the affidavits are out we can work up our agreement and get settled that which is unsettled.

We have knocked ourselves out to gain the confidence of everyone in Little Rock and you two. We will not blow it by being greedy or running wild. On the other hand, we have invested, over the years, a lot of money in equipment, software, and training. We have been preparing for a long time to do the kind of work we are currently turning out.

I know that we can press on cheerfully. We are grateful for this business. We are enthusiastic about the candidate. And I can hardly wait until this afternoon to get an idea how our Sub #01 is faring!

Sincerely,

24013

TO: RAHM EMMANUEL

PAT ANDERSON, PUBLIC OFFICE

DATE: 1/22/92

THANK YOU LETTERS ARE CURRENILY IN THE HANDS OF THE LITTLE ROCK OFFICE FOR CONTRIBUTIONS THROUGH THE 6TH OF JANUARY.

WE ARE SENDING TO THE LITTLE ROCK OFFICE TODAY ALL THANK YOU LETTERS FOR CONTRIBUTIONS THROUGH JANUARY 13, 1992.

THE LITTLE ROCK OFFICE WILL RECEIVE NEXT THIRSDAY LETTERS FOR CONIRIBUTIONS THROUGH JANUARY 23. THEY WILL RECEIVE ON THE FOLLOWING THURSDAY (FEB 6), THANK YOU LETTERS THROUGH THE END OF JANUARY AND SO ON.

THERE ARE SEVERAL THINGS THAT CAN AFFECT A THANK YOU LETTER:

1- AN ADDRESS IS REQUIRED BEFORE ONE CAN BE GENERATED

2- ADDRESSES DO NOT ALWAYS ACCOMPANY THE CONTRIBUTION CHECK

- 3- WE ARE CONSTANTLY TRYING TO FIND ADDRESSES, SOME ARE NEVER FOUND
- 4- WE HAVE SENT ON SEVERAL DIFFERENT OCCASIONS, WHAT I'LL CALL CATCH-UP THANK YOU LETTERS; THESE ARE LETTERS WHERE AN ADDRESS THAT WAS MISSING INITIALLY HAS BEEN "FOUND" AND A THANK YOU LETTER GENERATED.
- 5- WE'LL BE HAPPY TO RESPOND TO AN AD HOC REQUEST FOR A THANK YOU LETTER IN ORDER TO HELP SOOTHE A STRUATION (WHETHER OR NOT A THANK YOU LETTER, ACCORDING TO OUR RECORDS, HAS ALREADY BEEN GENERATED)

IF YOU HAVE ANY QUESTIONS OR SUGGESTIONS, WE'LL BE HAPPY TO RESPOND.

Call me if you have questions

24014

# Public Office Corporation

911 Second Street, N.E. Washington, D.C. 20002 202 675-4900 / Fax 675-4911

February 11, 1992

#### **MEMORANDUM**

For: David Watkins

Re: Tape of news segment re: Republican dirty tricks being used

against Bill Clinton

Last night Channel 5 here (WTTG - Fox television) carried a segment on their 10 o'clock news about the things being used against Bill Clinton. It included an interview of Ron Brown, a statement by a national Republican official, a reference to the spots being run in N.H. by Arkansas Republicans, etc. The WTTG newsman who prepared the segment led to the conclusion that, yes, there are strong links to Republican dirty tricks - Arkansas origin and nationally.

It struck me that if this segment, or something like it, were run in N.H. with the theme, "Don't base your vote on dirty tricks", it could be quite powerful. (I don't know about the rights involved to use precisely this segment.)

The campaign may already have noted this segment or may have something along the same lines in the works. In any event, I am obtaining both a 1/2" and a 3/4" tape of the segment this afternoon and will send it FEDEX to you tonight (or to where you may suggest.)

With best regards,

William R. Anderson



February 17, 1992

Pat and Bill Anderson Public Office Corporation 911 Second Street, N.E. Washington, D.C. 20002

pear Pat and Bill:

As you know, the Clinton for President Committee has been negotiating a loan with Worthen National Bank of Little Rock, based on the level of matching funds anticipated from our fundraising efforts. We executed all loan documents on Friday, February 14, 1992.

Worthen National Bank will transfer funds to the Committee based on a "Certifiable Matching Funds List" submitted to the bank by POC (See exhibit "C", attached). The bank will allow the Committee to borrow 90% of the Certifiable Matching Funds List. will let you know if a faxed copy will be acceptable, or if an original will need to be sent via overnight mail.

The Committee anticipates 4 to 5 takedowns of funds from Worthen between now and March 17, with the first anticipated on February 21 or 24, and the second on February 28 or March 2. I will provide you with more specific dates as soon as they can be determined.

The campaign must maximize its borrowing potential over the course of the next month. It is therefore critical that the compliance office in Little Rock and POC are as current as possible in the processing of contributions. Keeley will be the contact person between POC and the Committee on the initiation and processing of the necessary documentation for loan advances and will coordinate with me on the flow of documents between POC and Worthen Bank.

POC has a tremendous responsibility on behalf of the campaign, and we will support your effort in every way. I will rely on you to keep me informed of any needs you may have in terms of staffing, etc., or in any changes we need to make in the compliance office to better assist you.

24016

The next thirty days are extremely critical for the Clinton for President Campaign and we do realize that we must all work together as a team to ensure success. Thanks for all your past efforts and let's make it happen together for the next thirty days!

Sincerely

David Watkins

Deputy Campaign Manager

cc: Keeley Ardman

David Ifshin Phil Friedman CLIMA FOR FFED.

DATE:	

Public Office Corporation ("POC") states that the attached list of contributions and portions of contributions to the Bill Clinton For President Campaign (less any debits for returned checks) totaling \$\_ ("Certifiable ") is submitted as the basis of Matching Punds List No. an application for Worthen National Bank of Arkansas Loan to the Clinton For President Committee in Advance No. \$ (90% of Certifiable Matching Funds). The POC certifies that the funds listed on the amount of \$ attached Certifiable Matching Funds List No. :

- (a) have been reduced by the amount of any returned checks included on any previous Certified Matching Funds List. (The amount of the debit on the attached list for returned checks totals
- (b) do not contain funds which have been previously submitted to Bank on a previous Certifiable Matching Funds List by the Public Office Corporation;
- (c) constitute legal campaign contributions under all applicable federal and state laws;
- certifiable by the Federal Election Commission as matchable funds to be paid dollar for dollar by the Presidential Primary Matching Payment Account of the United States Treasury:
- (e) either (1) are contained in Borrower's previous submission to the FEC of , 1992 and for which no matching payment has been made to Borrower, or (2) will be included by Borrower in its next possible FEC submission on 1992. (Complete (1) or (2)); and
- (f) contain no contributions which have not been individually reviewed by the POC to check for all requirements necessary to be eligible as matching funds by the Federal Election Commission.

The above statements are true and correct to the best of my knowledge and belief.

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PUBLIC OFFICE CORPORATION

Authorized Representative

24018

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SUBSCRIBED AND SWORN to before me, a Notary Public, this day of, 1992.  Notary Public  My Commission Expires:	IN THE DISTRICT OF COLU	MBIX			
				Public,	this
		-			•
	My Commission Expires:		HOTELY PT	pT7C	

# SAMPLE ATTACHMENT TO . CONFIRMATORY CERTIFICATE OF PUBLIC OFFICE CORPORATION

Certifiable	Matching Funds List No. 1	(Sample) .
Submit	tted to Bank on	1992
	(Check and Complete A or I	B Below)
	(A) This list of certifunds is contained in Box submission to the FEC on 1992 and for which no mate been made to Borrower; or	rrower's previous
elimente que principa que principa en el MATERIA de la companya de la companya de la companya de la companya d	(B) This list of certifunds will be included by next possible FEC submiss: 1992.	Borrower in its
Contributor	Matchable To Date	Matchable This Submission
John Doe	\$200	\$100



#### MEMORANDUM

TO:

Mickey Kantor

Eli Segal Mark Gearan Bruce Lindsey David Wilhelm David Watkins

FROM:

David Ifshin Philip Friedman

DATE:

March 23, 1992

RE:

)

Convention and General Election Planning

Last October, we stressed the importance of the changes in the timing of the federal matching fund payments and late revisions to the regulations on bank loans as potentially decisive in having available cash to contest battleground primaries. The finalization of that loan was impaired unnecessarily by the campaign's late start and a tendency of too many hands trying to grab the wheel at the last minute. There are even more significant issues and new developments that will affect whether millions of dollars will be available or usable in the general election. We need to begin now to address these issues as an integral part of our convention and general election planning.

To assess the impact of the various regulations and provide strategic planning for the transition from the primary to general election, we have assembled an experienced committee of volunteer attorneys to provide assistance to the Campaign. These attorneys include:

Ken Gross: Partner at Skadden, Arps, and former Chief of Enforcement at the Federal Election Commission.

Lyn Utrecht: Partner at Manatt, Phelps, former General Counsel to the Harkin Presidential Campaign and Deputy General Counsel to the 1984 Mondale for President Committee.

Joe Sandler: Partner, Arent, Fox, General Counsel to the Association of State Democratic Chairs.

Christine Varney: Partner, Hogan & Hartson, former General Counsel to the Democratic National Committee.

This committee of volunteer attorneys represents virtually all of the experienced available talent in the campaign finance area and will assist the General Counsel in advising the Campaign on the following matters:

#### I. Wind-up of Clinton for President Committee, Inc.

The Clinton for President Committee, Inc. is entitled to spend \$27.2 million during the primary period. An additional \$5.524 million is available for exempt fundraising expenses. While private contributions will likely comprise the bulk of the Committee's assets, the Committee is entitled to receive a maximum of \$13.81 million in primary matching funds.

Within 15 days after receiving the nomination, the Committee must file a statement of net outstanding campaign obligations ("NOCO"). A NOCO statement is a statement of the amount of obligations for qualified campaign expenses less cash and other assets of the Committee. If the Committee is in a deficit position on the date of the nomination, the Committee may continue to raise private contributions and receive matching payments for matchable contributions. Conversely, if the Committee is in a surplus position, it will not be entitled to any further matching fund payments.

As the NOCO requirements indicate, there is a distinct benefit to the Committee incurring primary election obligations right up to the nomination. While primary funds may not be used for the general election, strategic purchases of equipment, media, polling and other items during the primary period can—without using the limited general election funds—benefit the campaign in the General. Thus, with the nomination in hand, the Committee may make extensive media buys in key states where primaries have not yet been held (i.e. CA, NJ, NY, OH, etc.) to make voters familiar with Clinton and his message.

The campaign's direct expenses for the convention in July must be paid for out of this account. (See Section V below).

#### II. General Election Financing

The Democratic nominee is entitled to a public funding entitlement of \$55.24 million. This entitlement also constitutes the expenditure limit of the presidential campaign in the general election. After the appropriate agreements and certifications are submitted to and approved by the Commission, this entitlement will be available to the General Campaign approximately four to five days after the nomination.

In accepting this entitlement, the General Campaign is prohibited from accepting private contributions except for the

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General Campaign's legal and accounting compliance fund. The General Campaign is also prohibited from using any excess primary funds for general election expenses.

## III. Coordinated Party Expenditures

In addition to the \$55.24 million that may be spent by the presidential campaign in the general election, there are additional funds available from the Democratic National Committee ("DNC"). The DNC is entitled to spend \$10.33 million in coordinated party expenditures during the general election. This money is commonly referred to as 441a(d) money. Coordinated party expenditures are 1) separate from the general election expenditure limits; 2) made in consultation with the campaign; and 3) paid directly and reported by the DNC.

Individuals may make contributions of no more than \$20,000 each to the national party committees (i.e. national, house and senate campaign committees) to finance the 441a(d) expenditures. No individual, however, may give more than \$25,000 in aggregate federal contributions in a calendar year.

PACs may give contributions to the national party committees to finance the 441a(d) expenditures of no more than \$15,000 each to the national committee, House campaign committee, and the Senate campaign committee.

#### IV. Legal and Accounting Compliance Fund

The presidential campaign is permitted to raise private contributions for a legal and accounting compliance fund. Individuals, even those who "maxed out" in the primary, may contribute \$1,000 to such fund. Funds for such an account may be raised prior to the nomination.

In 1988 this fund was approximately \$6 million. Excess funds from the Committee's primary accounts may be transferred to the fund. The fund may be used for the following.

- 1) to pay all amounts, including salaries, incurred by the campaign for legal and accounting services to ensure compliance with the Act.
- 2) to defray that portion of overhead, payroll, computer services, etc. that are related to compliance.
- 3) to defray any civil or criminal penalties
- 4) to make repayments
- 5 to defray unreimbursed Secret Service transportation costs

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6) to make a bridge loan to the General Campaign prior to the receipt of federal funds.

# V. State Party Activity on Behalf of Presidential Campaigns

In order to encourage grass roots party activity, the law permits political party committees to engage in "generic" party building activities that provide benefits to the presidential campaign. These activities may be paid for with state party funds and do not count against the presidential campaign's expenditure limit. It is these funds which have been disparagingly characterized as "soft money" that may make the difference between victory and defeat in a close election since they are usable for programs designed to increase targeted voter turnout.

While certain restrictions are associated with some of the activities, they include the following:

- 1. Voter registration and get out the vote:
- 2. Volunteer campaign materials (buttons, bumper stickers, handbills, brochures, yard signs, etc.);
- 3. Slate card distribution.

The rules governing these funds have been changed dramatically by the FEC following a law suit by Common Cause. The new regulations alter the permissible allocation of funds between federal and non-federal sources. The consequence is that the \$50 million or so calculated for the general through the state parties may be of far less value. Moreover, these new allocation rules have forced many state parties into a position where their federal accounts are in increasing debt. Comprehensive planning in this area needs to begin immediately in a manner that is integrated into our general election planning and coordination with the DNC.

## VI. Convention Related-Expenses

In July 1991, the Democratic National Committee received for its nominating convention committee \$10.6 million in federal funds. In 1992 this amount will be increased by an additional entitlement of \$448,000 as an adjustment for inflation. Specific regulations govern expenditures at the Convention and contributions that may be received to defray convention expenses. It is imperative that all convention planning take into account these limitations and restrictions on the use of federal funds. As noted in Section I, the campaign's own expenses must be paid out of our primary campaign account.



To: Pat Anderson

From: David Watkins

Re: Compliance Fund

Date: May 21, 1992

To assist us in planning for the transition to the General election, particularly regarding fundraising and management for the General election compliance fund, we will need several things from you on your visit to Little Rock next week:

- 1. A proposal outlining POC's capabilities for management and reporting of the compliance fund.
- A list of <u>all</u> excessive contributors, broken down between
   a. those that can be resttributed to another donor for the primary, and
  - b. those that can be redesignated to the compliance fund.

Please include the dates of all excessive contributions.

- 3. Your thoughts as to how we can better assist you in the filing of the remaining primary compliance reports.
- 4. An estimate of contributions which have not been submitted for matching, but which will be in the future.
- 5. A sample of all affidavits used by POC during the primary.

We are looking forward to your visit. Please call Keeley when you know your travel arrangements.

#### **HEHORANDUM**

TO:

DAVID WATKINS KEELEY ARDMAND CHRISTINE VARNEY BARBARA YATES PATTY REILLY

FROM:

PAT ANDERSON

PUBLIC OFFICE CORPORATION

BATE:

JUNE 15, 1992

RE:

GENERAL ELECTION SERVICES

Thank you for the opportunity to present our ideas to you. We have enjoyed working with the Clinton for President Committee. We are proud of our record of service to the campaign and we are thrilled that Governor Clinton will be nominated.

There isn't much time to enjoy this plateau, however. There is a much greater challenge ahead.

The Clinton Committee is up against savage computer capability with Ross Perot's background and this is George Bush's second time around.

We don't claim to have the only solution but we ask your continued trust because we have demonstrated our ability to produce quality products, to be flexible, to be resourceful, and to meet deadlines when the work has been heaped upon us at the last minute. And, we have been a team player; we feel very committed to this campaign.

There are several areas where we believe the general election campaign can benefit from centralized data management and support services that can be provided by Public Office. Each is discussed on the following pages; the final section contains the cost overview.

As you read, please bear in mind that configurations mentioned herein regarding equipment, manpower, work-mix, work-flow, etc., are intended to give some structure, a common point, from which effective discussion and decision making can begin. In a presentation such as this, where we are not responding to a set of specifications, it stands to reason that we might overlook some details that seem obvious to you. Any plan we present comes with the realization that it must be flexible and able to meet contingencies.

## TASK A. Fulfill obligations of current contract regarding Primary campaign.

- manage contributions and contributor records
- generate and track thank you letters/envelopes
- produce various reports containing contributor data
- manage matching funds effort
- obtain contributor compliance documentation, as necessary
- manage primary expenditure data (checks, payroll, and drafts)
- generate FEC compliance report (receipts and expenditures)
- provide general support for fundraising efforts
- provide FEC with final audit tape containing primary contributor/expenditure data

## TASK B. Support General Election Accounting and Compliance (GLAC).

- manage contributions to GLAC in a similar manner as the primary contributions UNDER THE CURRENT AGREEMENT AT THE SAME PRICES
- generate and track thank you letters/envelopes
- produce necessary reports for campaign management
- obtain contributor compliance documentation, as necessary
- manage GLAC expenditure data
- generate GLAC compliance reports (receipts and expenditures)
- provide general support for GLAC fundraising efforts
- provide FEC with final audit tape containing GLAC contributor/expenditure data

Our system is very adept at tracking two elections (P and G). We can give you any reports necessary for management of the GLAC (contributions and expenditures). Having both types of contributions side-by-side in the contributor's record will ensure that balancing is possible and that the contributor's history is a complete one, in one place, not fragmented into separate files.

# TASK C. Support the clean-up of Little Rock's accounting data in order to:

- make sure that the more complex expenditures (i.e., World Wide Travel, Greenberg-Lake, etc.) are properly documented and allocated
- make sure that the data in the Little Rock accounting system agrees with POC expenditure database
- transfer the invoice data to the POC system (either manual input or magnetic tape would be okay with us) this is necessary to generate accurate debt/obligation schedules for the PEC (see comment below)
- enter vendor data on POC system (see comment below)
- when we are at the point where the computer data agrees with the documents and we feel like the data is accurate, re-file (supplant) all FEC compliance reports for the Primary in one fell swoop
- generate the final tape to the FEC for audit purposes

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Data on the POC system was recently termed as "the best accounting data available." This task is necessary to shore up the data reported to the FEC and ensure an "easy, clean audit" of primary expenditures.

One thing to remember here: it is NOT imperative to put the invoice data on the POC system if the system in Little Rock can do two things:

- (1) generate accurate historical debt/obligation information on a month-ending boundary, and
- (2) generate a clean magnetic tape to give to the FEC as regards invoice data and vendor files

If the plan is to keep the data on the Little Rock system and rely on it to generate the mag tape, we recommend that:

(a) a tape should be generated ASAP to support the plan, and (b) it should be read into the POC system and "looked at" with the thought of "is this what we want to give to the FEC."

# TASK D. The role of Data Manager for the General election expenditures:

Proper, effective management of this process is one of the keys to winning the election (not to mention avoidance of fines and bad publicity).

WE PRESENT OUR THOUGHTS ON THIS PROCESS FOR WHATEVER VALUE THEY MAY BE -- NOT AS A RECOMMENDATION THAT POC HAVE THE PRIMARY RESPONSIBILITY.

PLEASE SEE PAGE 6 TASK D COMMENTS FOR A COMPROMISE PLAN WHICH WILL USE POC AS INSURANCE AND TO ASSIST.

I think we all agree that:

- in order to avoid being drowned with the workload, the Committee must stay in control from day one;
- the day after Governor Clinton's nomination is day one.

Let's begin with an overview of the major parts (units) of the process:

(1) Budget

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- establish cost centers and allocate budgeted expenses
- design budget coding system that is also used as basic FEC reporting code
- create "wish list" and basic budget reports to be used for budget control and strategy management
- write procedures for authorization of expenditure process (varies based on budget item and \$ level)
- track budget\$ versus invoices/payments (hooking up the Budget\$ with what is happening)
- write procedure for processing invoices and dynamic payments (manual checks and drafts) so that items are coded properly ASAP so that budget data is always up to the minute

(2) Payments

- drafts manual checks system checks wire transfers payroll

(issued and used by field) (ad hoc checks issued dynamically in LR) (payments handled in routine manner) (from GOA, MEDIA) (generated by payroll service and subsequently loaded into EXPEND DB)

- (3) Compliance make sure all expenditures are documented and tracked properly
  - review budget coding as a double check
  - interface with field, as necessary to obtain documentation/missing information
  - review invoices to make sure overpayments/underpayments do not occur
  - ~ monitor, monitor, monitor
- (4) Accounting perform all accounting functions based on daily journals and reports from the data management unit
  - perform accounting oversight responsibilities
  - balance bank statements based on information that data management unit uncovers
  - review reports from data management for accuracy
  - prepare financial statements
- (5) Oversight make sure that all parts are working together
  - resolve problems, bottle necks, inefficiences, bulges in work load, etc.
  - spot check various processes for completeness
  - be central point for effective communication between the "parts"
  - keep things legal!
  - handle any delicate matters
  - review FEC reports
- (6) Data Mgt
- computerize and track the data involved with Budget, Payments, and Compliance
- act as data entry operator, as required,
- react to needs of Budget, Payments, Compliance, and Oversight departments
- be reponsible for accuracy of data, consistency of data. and timely updating of data
- design and produce reports, working papers, as necessary to support all parts of this process
- perform basic "bank statement" balancing and turn over results to Accounting

The point of this "unit" approach where the data management is performed centrally, is to achieve the following:

- maximize the AVAILABILITY of data
- eliminate dual data entry
- eliminate bottlenecks
- increase efficiency
- reduce costs
- guarantee a first-rate budget process that will really serve serve the campaign and be available on a timely, routine basis

Don't forget, the VOLUME of data for a single month will increase over the heaviest of Primary months by a factor of four. Where the process has sagged in the past, you are guaranteed collapse if the volume is four times heavier.

#### TASK E. Provide data security and redundant systems.

- Public Office has a perfect record in providing data security for campaign information.
- We backup daily to magnetic tape; we take tapes offsite regularly.
- We also take to an offsite location an entire set of check documentation and copies of all affidavits.
- We believe that, in addition to our regular security procedures, the Clinton campaign management should have a disaster backup site with a redundant system already running on it.

This would be accomplished by Public Office setting up another computer, one that is compatible with the computer we have in our present office in Washington, at a site in nearby Virginia.

- In addition to providing redundancy, the increased capacity of another system will be much appreciated in supporting the increased volume of the general election campaign and the increased number of people who need terminals and printers connected to the expenditure and budget databases.
- It is our opinion that nearly all of the cost of this separate site can be charged against the GLAC fund.
- In the event of disaster at the computer site, a backup tape can be loaded immediately into the compatible system and little time and usually little data is lost.

#### TASK F. Provide Fast Response Database Products.

We have been seeing a marked increase in the requests for selective lists of contributors as well as for mailing labels and magtapes for AB Data direct mail programs.

Since this is proceeding smoothly, the Committee may wish to add other key groups to its online databases -- key labor people, key political people, volunteers across the country, staff, etc.

We can talk about this more a little later.

- Task A. It is a given that POC will continue Task A, which is fulfilling the current obligation as regards the Primary campaign.
- Task B. We think it makes sense from a data management and compliance point of view to Assign Task B (GLAC contributions and reporting) to POC under the same terms and agreements as Task A.

The management of the GLAC expenditures is covered as an item in Task D. below.

Task C. The cleanup of Little Rock system and re-filing of FEC reports for Primary -- for the time being, this must be done on a time and materials basis. Work on this Task will be done on a re-active basis rather than pro-active basis. As of right now, it appears that most of the work needs to be done in Little Rock on the accounting system's data.

When the task can be more defined, we can do some cost projections.

Task D. From the lack of indications otherwise, the read I get on Task D (general election expenditure/budget management) is that you prefer to handle this task in-house, using the accounting system packages.

This is such an enormous task and such an important task that I wouldn't want to touch it without the proper resources and computer system. When I estimate that cost, especially when you add a redundant capability to it, I am afraid it would only serve to reinforce your current thinking of doing it in-house.

So, I offer this alternative solution that will give you a backup, contingency plan were something to go sour along the way:

- Authorize POC to develop their expenditure/budget management plan and use the GLAC data as the empirical data on the system -- this will not only serve a useful purpose but provide a backup accounting system to the one in Little Rock.

We will develop and manage the entire GLAC expenditure system (data entry, check generation, budget coding, bank balancing, cash management, etc.) on a time and materials basis not to exceed \$100,000 from right now to December 31, 1992. Our objective would be to have the basic system up and running ASAP but not later than August 1, 1992. It would be a mirror image of AT LEAST the capabilities of the accounting system you have in Little Rock. We guarantee that any reports and data management needs are met to your specifications.

Again, the purpose of this would be to have in place a contingency plan to provide support, if needed, to the system you will have in Little Rock while at the same time be serving a useful purpose.

- So far as a redundant computer is concerned, I recommend you take that insurance too. We have an offsite facility where a system of our current capacity can be kept running, ready as a backup. This expense, because it is a backup to legal and accounting, should be considered a GLAC expenditure. We will be happy to quote you a precise figure for maintaining this compatible system in readiness. We ESTIMATE that total cost to be around \$15,000 between July 20 and election day.

Remember, what we are talking about is a computer that is "yours" except that the data is not on it. The setup, the accounts, the ports, the program structures, etc., are vaiting and ready to be used as soon as you load in the data files (routinely kept on backup magnetic tapes anyway).

I hope you know by now that we want nothing but the best for this campaign and that we hope that everything runs very smoothly from now until November. We think you have brought on staff terrific, bright people. Good luck in your new headquarters. We hope that you will let us know your questions and thoughts as soon as possible.

Sincerely,

Patricia V. Anderson



June 30, 1992

Pat Anderson Public Office Corporation 911 2nd Street, N. E. Washington, D.C. 20002

Dear Pat:

Thank you for coming to Little Rock to meet with us and for your proposal to assist the Campaign during the general election.

After careful consideration, the Campaign has decided to bring all accounting and FEC reporting for the general election in house.

We appreciate POC's assistance in the campaign to date and desire that POC remain a part of our campaign.

First, as discussed in Task A of your proposal, the primary committee continues to be a priority as we retire the debt, and continue to submit matching funds. Towards that end, we want to continue the matching funds component of the contract as it now stands. Moreover, given that the primary committee's reporting obligations continue until the debt is retired, we want POC to continue to file our FEC reports for the primary committee. Since the volume of primary activity will decrease significantly, we will need to renegotiate the fees for filing the monthly primary report. Also, the expenditure portion of our existing contract expired several weeks ago and needs to be renegotiated. Please call Barbara Yates at extension 3731 to discuss the terms of the revised contract.

Second, as noted in Task C of your proposal, there is a substantial amount of clean up work needed to prepare for the FEC audit. Most notably, we are concerned with reviewing the more complex expenditures, ensuring that the data in the Little Rock system agrees with POC's database, comprehensively amending the FEC report with a focus on allocation, and generating the audit tape. Although your proposal notes that this task needs further definition, we want your assistance in further negotiations in this area. Please include this in discussions of the revised agreement referred to above.

Third, the campaign would like the availability of POC's expertise in the coming campaign on a consultant basis. We want to

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negotiate an hourly rate for this consultation.

Again, we appreciate your assistance thus far and look foward to our continued relation ship.

Sincerely,

David Watkins

CC: Barbara Yates Keely Ardman